AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
FEDERAL REGISTER
OF THE UNITED STATES 1934

VOLUME 14 NUMBER 55

Washington, Wednesday, March 23, 1949

TITLE 44—PUBLIC PROPERTY AND WORKS

Chapter V—Department of State

[Departmental Reg. 108.87; FLC Reg. 8, Order 6]

PART 508—DISPOSAL OF SURPLUS PROPERTY LOCATED IN FOREIGN AREAS

IMPORTATION INTO UNITED STATES

MARCH 16, 1949.

Foreign Liquidation Commissioner Regulation 8, Order 6, of December 18, 1948 (Departmental Regulation 108.82, 13 F. R. 7864) is hereby revised and amended to read as herein set forth.

The President has requested the Secretary of State to act, with regard to permitting the importation of surplus property, upon determinations as made by the Secretary of Commerce. The Secretary of Commerce has informed the Secretary of State that certain materials which have been or may be declared to the Foreign Liquidation Commissioner as surplus property located in foreign areas are in critically short supply and urgently needed in the domestic economy and are qualified for importation into the United States during the periods hereinafter specified.

It is hereby ordered, (a) That § 8508.15 of FLC Regulation 8 shall not apply to prevent the importation of surplus property specified in paragraphs numbered (1) through (3) of Schedule A attached hereto if such property is in transit to a point in the United States on or before June 30, 1949, (b) That § 8508.15 shall not apply to prevent the importation of surplus property specified in paragraphs numbered (4) and (5) of Schedule A attached hereto, except as to such items as may be deleted therefrom by subsequent amendment of this order, if such property is in transit to a point in the United States on or before June 30, 1949. Any amendment which may be issued for the purpose of deleting items from paragraphs numbered (4) and (5) of Schedule A shall not be effective until thirty (30) days after publication. For the purpose of this order "in transit to a point in the United States" shall mean the property involved has been delivered to or accepted by a carrier which has issued a through bill of lading thereon to a point in the United States.

(58 Stat. 765, 59 Stat. 533, 60 Stat. 168, 754; 50 U. S. C. App. and Supp. 1611–46)

This order shall become effective when published in the FEDERAL REGISTER.

DEAN ACHESON,
Secretary of State.

SCHEDULE A

(1) Burlap bags and strips.

(2) Containers: steel, shipping barrels, drums, and pails.

(3) Telephone and telegraph equipment, including but not limited to lead covered cable; line, messenger and drop wire; pole line hardware; outside plant communication equipment; central office equipment, including switchboard positions; and miscellaneous telephone apparatus.

(4) Tire chains and parts.

(5) All items of machinery, equipment, and parts therefor in *Schedule B, Statistical Classification of Domestic and Foreign Commodities exported from the United States, Part II*,[1] January 1, 1949, Edition, Nos. 600700 through 610800 (steel mill products); Nos. 700000 through 788905, inclusive, with the following exceptions: Nos. 720110 and 720115 (only as to excavators and cranes of 1 cubic yard and under bucket or dipper capacity, other sizes importable), 721500 (concrete mixers), 722610 and 722620 (scrapers, self-loading), 725000 through 725050 (industrial trucks), 740005 through 745898 (machine tools and other metal-working machinery), 770400 through 770615 (air compressors) and 774300 through 774350 (scales and balances, except laboratory).

[F. R. Doc. 49–2149; Filed, Mar. 22, 1949; 8:50 a. m.]

[1] Copies of Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, Part II, January 1, 1949, Edition, are available for sale by the Superintendent of Documents, Washington 25, D. C., price $1.50. Copies are also available for reference, but not for sale, at offices of Collectors of Customs and Regional Offices of the Department of Commerce.

CONTENTS

Agriculture Department Page
See also Entomology and Plant Quarantine Bureau.
Proposed rule making:
Milk handling in Lowell-Lawrence, Mass., area 1286
Pears, fresh Bartlett, plums, and Elberta peaches grown in California (2 documents) 1293, 1300

Alien Property, Office of
Notices:
Vesting orders, etc.:
Blass, Grete 1312
De Fonbrune, Pierre Henry Dussumier 1312
De Pietro, Nicola, et al 1312
Lepkowska, Marjorie 1312
Lowenstein, Leo 1312
Maddaleni, Brunilde 1312
Meyer, Martha 1313
Milo, Ellen 1313
Monheimer, Otto 1313
Ottenstein, Friedrich 1311
Rossi, Maddalena 1313
Ruggeberg, Eleonore 1311
Saito, Rev. Jogen, and Mrs. Naruo Saito 1311
Societa Anonima Lucchese Olii e Vini 1313
Societe Anonyme Tubest 1313

Army Department
Notices:
Military government for Germany (U. S.); export-import information 1302

Civil Aeronautics Administration
Notices:
Organization; miscellaneous amendments 1303

Entomology and Plant Quarantine Bureau
Proposed rule making:
Rust-resistant species and varieties of barberry, mahonia, and mahoberberis 1285

Federal Communications Commission
Notices:
Hearings, etc.:
Alaska Broadcasting Co. and Baranof Enterprises, Inc. 1307

FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Division of the Federal Register, the National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the Code of Federal Regulations, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended June 19, 1937.

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1949 Edition

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The Code of Federal Regulations, 1949 Edition, contains a codification of Federal administrative rules and regulations issued on or before December 31, 1948, and in effect as to facts arising on or after January 1, 1949.

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***Title 3, 1948 Supplement*, containing the full text of Presidential documents issued during 1948, with appropriate reference tables and index.**

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CONTENTS—Continued

Federal Communications Commission—Continued — Page
Notices—Continued
Hearings, etc.—Continued
Bluff City Broadcasting Co. (WDIA) — 1305
Custer County Broadcasting Co — 1306
Florida Broadcasting Co. (WMBR-TV) — 1306
Killian, James L — 1305
Lake Broadcasting Co., Inc — 1304
Lake County Broadcasting Corp — 1306

CONTENTS—Continued

Federal Communications Commission—Continued — Page
Notices—Continued
Hearings, etc.—Continued
Lamar County Broadcasting Co — 1307
Lapides, Abe, and Bowling Green State University — 1304
Susquehanna Broadcasting Co. (WSBA) — 1305
WKAX — 1308
WOAX, Inc. (WTNJ) and Morrisville Broadcasting Co. (WBUD) — 1307

Federal Power Commission
Notices:
Hearings, etc.:
City of Pittsburgh et al — 1308
El Paso Electric Co — 1308
Fort Peck Project, Montana — 1308
Miller, Roy F., et al — 1309
Montana Power Co — 1309
Worcester Suburban Electric Co — 1309

Indian Affairs Bureau
Proposed rule making:
Flathead Indian Irrigation Project, Montana; operation and maintenance charges — 1301

Interior Department
See Indian Affairs Bureau.

Internal Revenue Bureau
Proposed rule making:
Brandy production — 1301

Interstate Commerce Commission
Rules and regulations:
Bonds, surety, and policies of insurance — 1284

Justice Department
See Alien Property, Office of.

National Military Establishment
See Army Department.

Securities and Exchange Commission
Notices:
Hearings, etc.:
City of Porto Alegre — 1309
General Public Utilities Corp. — 1309
Ohio Power Co. and West Penn Power Co — 1310
Public Service Corp. of New Jersey — 1309
Utah Power & Light Co. and Western Colorado Power Co — 1310

State Department
Rules and regulations:
Disposal of surplus property located in foreign areas; importation into U. S — 1283

Treasury Department
See Internal Revenue Bureau.

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

Title 7 — Page
Chapter III:
Part 301 (proposed) — 1285

CODIFICATION GUIDE—Con.

Title 7—Continued — Page
Chapter IX:
Part 934 (proposed) — 1286
Part 936 (proposed) (2 documents) — 1293, 1300

Title 25
Chapter I:
Part 130 (proposed) — 1301

Title 26
Chapter I:
Part 184 (proposed) — 1301

Title 44
Chapter V:
Part 508 — 1283

Title 49
Chapter I:
Part 174 — 1284

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

Subchapter B—Carriers by Motor Vehicle

[Ex Parte No. MC-5]

PART 174—SURETY BONDS AND POLICIES OF INSURANCE

SURETY BOND, INSURANCE POLICY, OR OTHER SECURITIES

In the matter of security for the protection of the public as provided in part II of the Interstate Commerce Act, and of rules and regulations governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities and agreements by motor carriers and brokers subject to part II of the Interstate Commerce Act.

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 3d day of March A. D. 1949.

Section 215 of the Interstate Commerce Act (49 U. S. C. 315) and §§ 174.1 and 174.1a (49 CFR, 1947 Supp. 174.1, Cum. Supp. 174.1a) of the regulations governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer or other securities, being under consideration, and

It appearing, that the proposed changes are either explanatory or relieve from present requirements, and, therefore, observance of the procedural requirements of section 4 (a) of the Administrative Procedure Act (5 U. S. C. 1003 (a)) is unnecessary,

It is ordered, That § 174.1a of the said rules and regulations is hereby canceled, and § 174.1 is hereby amended to read as follows:

§ 174.1 *Surety bond, insurance policy, or other securities*—(a) *Property damage; public liability.* No common or contract carrier subject to part II of the Interstate Commerce Act shall engage in interstate or foreign commerce, and no certificate or permit shall be issued to such a carrier or remain in force, unless and until there shall have been filed with and approved by the Commission a surety bond, policy of insurance (or certificate

of insurance in lieu thereof), proof of qualifications as a self-insurer, or other securities or agreements, in not less than the amounts prescribed in § 174.2, conditioned to pay, within the amount of such surety bond, policy of insurance (or certificate of insurance in lieu thereof), statement of qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to, or the death of any person resulting from, the negligent operation, maintenance, or use of motor vehicles in transportation subject to part II, Interstate Commerce Act, or for loss or damage to property of others: *Provided*, That the requirements of this paragraph shall not apply to common or contract carriers partially exempt from regulation by sections 202 (c) and 203 (b) (49 U. S. C. 302 (c) and 303 (b)), or to motor common or contract carriers which have, with the approval of the Commission, leased their entire operating rights to others, but only as long as the lessee of such rights continues operations in accordance with the Commission's approval. Lessors may not resume operations unless and until full compliance is effected.

(b) *Common carriers, cargo insurance; exempt commodities.* No common carriers by motor vehicle subject to part II of the Interstate Commerce Act shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a carrier or remain in force, unless and until there shall have been filed with and approved by the Commission a surety bond, policy of insurance (or certificate of insurance in lieu thereof), proof of qualifications as a self-insurer, or other securities or agreements in not less than the amounts prescribed in § 174.2, conditioned upon such carriers making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carriers in connection with its transportation service: *Provided*, That the requirements of this paragraph shall not apply to common carriers partially exempt from regulations by sections 202 (c) and 203 (b) (49 U. S. C. 302 (c) and 303 (b)), or to motor common carriers which have, with the approval of the Commission, leased their entire operating rights to others but only as long as the lessee of such rights continues operations in accordance with the Commission's approval. Lessors may not resume operations unless and until full compliance is effected. *Provided, further*, That the requirements of this paragraph shall not apply in connection with the transportation of the following commodities:

Ashes, wood or coal.
Bituminous concrete (also known as blacktop or amosite).
Cinders, coal.
Coal.
Coke.
Commercial fertilizer.
Corn cobs.
Cottonseed hulls.
Fish scrap.
Forest products, viz: Logs, billets, or bolts, native wood, Canadian wood or Mexican pine; pulpwood; fuelwood; wood kindling; and wood saw-dust or shavings (shingle tow) other than jewelers' or parafined.
Garbage.
Gravel, other than bird gravel.
Ice.
Iron ore.
Lumber.
Manure.
Meat scraps.
Ores in bulk.
Poles and piling, other than totem poles.
Salt, in bulk or in bags.
Sand, other than asbestos, bird, iron, monazite, processed, or tobacco sand.
Scrap iron.
Scrap steel.
Shells, clam, mussel, or oyster.
Slag, other than slag with commercial value for the further extraction of metals.
Slate, crushed or scrap.
Soil, earth, or marl, other than infusorial, diatomaceous, tripoli, or inoculated soil or earth.
Stone, unglazed and unmanufactured, including ground agricultural limestone.
Sugar beet pulp.
Sugar beets.
Water, other than mineral or prepared water.

And it is further ordered, That this order shall become effective April 18, 1949, and that notice thereof be given to the public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing with the Division of the Federal Register.

(Sec. 215, 49 Stat. 557; 49 U. S. C. 315)

By the Commission, Division 5.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 49-2140; Filed, Mar. 22, 1949; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Bureau of Entomology and Plant Quarantine

[7 CFR, Part 301]

BARBERRY, MAHONIA, AND MAHOBERBERIS

NOTICE OF PROPOSED ADMINISTRATIVE INSTRUCTIONS DESIGNATING RUST-RESISTANT SPECIES AND VARIETIES

Notice is hereby given under section 4 of the Administrative Procedure Act (5, U. S. C. 1003) that the Chief of the Bureau of Entomology and Plant Quarantine is considering the issuance of administrative instructions, as authorized in § 301.38-5 of the regulations supplemental to the Black Stem Rust Quarantine No. 38 (7 CFR 301.38 through 301.38-11, 14 F. F. 999) to designate rust-resistant barberry, mahonia, and mahoberberis plants, as follows:

The following species and horticultural varieties of barberries, mahonias, and mahoberberis are hereby designated as rust-resistant:

Berberis beaniana.
Berberis buxifolia.
Berberis buxifolia nana.
Berberis candidula.
Berberis chenaultii.
Berberis circumserrata.
Berberis concinna.
Berberis darwinii.
Berberis gagnepainii.
Berberis gilgiana.
Berberis horvathii.
Berberis julianae.
Berberis koreana.
Berberis linearifolia var. Orange King.
Berberis mentorensis.
Berberis potanini.
Berberis sanguinea.
Berberis sargentiana.
Berberis stenophylla.
Berberis stenophylla diversifolia.
Berberis stenopyhlla nana compacta.
Berberis thunbergii.
Berberis thunbergii atropurpurea.
Berberis thunbergii maximowiczii.
Berberis thunbergii erecta.
Berberis thunbergii "globe".
Berberis thunbergii "golden".
Berberis thunbergii minor.
Berberis thunbergii pluriflora.
Berberis thunbergii "thornless".
Berberis thunbergii "variegata".
Berberis triacanthophora.
Berberis verruculosa.
Mahonia aquifolium.
Mahonia bealei.
Mahonia dictyota.
Mahonia nervosa.
Mahonia pinnata.
Mahonia repens.

The purpose of these administrative instructions will be to relieve commerce by designating the rust-resistant species and horticultural varieties of barberries, mahonias, and mahoberberis (1) the plants of which may be shipped under permit anywhere within the United States, and (2) the seeds and fruits of which, if produced in any of the States of Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, may be shipped under permit between or from such States.

All persons who desire to submit written data, views, or arguments in connection with this matter should file the same with the Chief of the Bureau of Entomology and Plant Quarantine, Agricultural Research Administration, United States Department of Agriculture, Washington 25, D. C., within 15 days after the date of the publication of this notice in the FEDERAL REGISTER.

(Sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 15th day of March 1949.

[SEAL] AVERY S. HOYT, *Acting Chief, Bureau of Entomology and Plant Quarantine.*

[F. R. Doc. 49-2180; Filed, Mar. 22, 1949; 8:59 a. m.]

Production and Marketing Administration

[7 CFR, Part 934]

Handling of Milk in Lowell-Lawrence, Mass., Marketing Area

Decision with respect to proposed marketing agreement and to proposed amendment to order, as amended

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Supps., 900.1 et seq.), a public hearing was held at Lawrence, Massachusetts, February 3, 1949 pursuant to a notice issued on January 26, 1949 (14 F. R. 415), upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Lowell-Lawrence, Massachusetts, marketing area.

A recommended decision, based on the record of such hearing, was issued by the Acting Assistant Administrator, Production and Marketing Administration, on February 21, 1949 (14 F. R. 900). Exceptions have been filed to that recommended decision and were considered in arriving at the findings and conclusions contained herein. The material exceptions are discussed specifically in the findings and conclusions with respect to the points to which such exceptions refer. However, to the extent that the findings and conclusions contained herein are at variance with any exception pertaining thereto, such exception is overruled.

The material issues presented on the record were concerned with the following:

1. Factors to be deducted from the wholesale prices of cream and nonfat dry milk solids in the determination of formula prices for Class II milk.

2. Formula factors to be used in determining the value of butterfat in excess of 3.7 pounds in each hundredweight of milk or the deduction in the hundredweight price to be permitted for milk averaging less than 3.7 pounds of butterfat per hundredweight.

3. A provision that producers may be reported as delivering to the plant to which they usually deliver if their milk is diverted to a plant at which milk is not otherwise received from producers.

4. Revision of the definitions, and addition of new definitions to describe more specifically the terms used in the order.

5. Revision of the provisions relating to classification, and addition of a section on assignment of various types of receipts to Class I or Class II, for the purpose of setting forth the rules for classification in greater detail.

6. Extension of the provision for allocation of a handler's Class I milk disposed of from a plant within the 20-mile zone, so as to provide also for allocation of Class I milk disposed of from plants beyond the 20-mile zone.

7. Make other minor changes, including rearranging paragraphs of the order for greater clarity and ease of understanding, elimination of unnecessary language, incorporation of the effects of the section on applications of provisions in other parts of the order, bringing the Class I price schedule up to date to show the prices actually effective under the order.

8. General.

Findings and conclusions. The following findings and conclusions on material issues are based upon evidence introduced at the hearing and the record thereof.

1. *Formula factors to be used in determining Class II milk prices.* The record of the hearing indicated the need for maintaining Class II milk prices generally in line with market prices of cream and nonfat dry milk solids. Also, a price for Class II milk in this market which moves with the price of milk for similar uses in the Boston market is necessary because of the interrelationship of the Boston and Lowell-Lawrence markets. The evidence at this hearing dealt with the determination of factors relative to cream prices and nonfat milk solids prices to be used in establishing the Lowell-Lawrence Class II price.

The Boston milk order provides for allowances at country plants in the 201–210 mile zone of 57.5 cents in the months October through February in addition to approximtely 9.5 cents allowance for transporting Class II products to the city market. Seasonal increases in allowances in the other months add 6 cents more in August and September, 12 cents more in March, April and July and 18 cents more in May and June. The Boston prices are applicable to the 201–210 mile zone which is about the center of the country plant area for that milkshed. Milk for the Lowell-Lawrence market is received principally at city plants although the market also receives considerable quantities of milk from country plants operated under the Boston order. The Lowell-Lawrence handler's operations are more similar to the operations of country plants in the Boston milkshed than to operations at Boston city plants, since there is not the opportunity for the division of operations between country and city which is possible in a market supplied by a large system of country plants.

The Lowell-Lawrence handler ordinarily does not have to incur the cost of shipping cream, since he separates it at his city plant, and the allowance for that factor in the Boston Class II price is therefore not applicable in Lowell-Lawrence. On the other hand, the Lowell-Lawrence handler must dispose of the skim milk in about the same way as the country plant operator in the Boston market. Excess skim milk in the form of manufactured dairy products competes with products made by Boston manufacturing plants and products manufactured in other supply areas.

The Class II price for Lowell-Lawrence city plants should be established at a level equal to the Boston price at country plants without the cream freigh allowance.

The country milk plant area in New England from which Lowell-Lawrence draws milk is within the same area from which the Boston market regularly draws a large part of its milk supply. In the computation of price differentials for Class II milk received at plants various distances from the Lowell-Lawrence market, it is necessary to consider the prices which would be applicable to such plants if they were purchasing milk under the provisions of the Boston order. The Lowell-Lawrence market is approximately 30 miles nearer to the center of the country plant milk supply area than is the Boston market. The differentials for the Lowell-Lawrence market should be established, therefore, so that the Class II price for plants in the 151–200 mile zone from Lowell-Lawrence corresponds to the prices at plants in the 181–230 mileage distance from Boston. In view of the less extensive nature of the country plant supply for Lowell-Lawrence, price differentials based on 50-mile brackets are more suitable than the 10-mile graduations used in the Boston order.

Although a producer representative requested that the order establish separate values for skim milk and butterfat in Class II milk, the record of the hearing does not contain a basis for establishing such a separation.

One cooperative association, in its exceptions, requested that the Class II price be lower than the price under the Boston order by the amount of the difference in the rates of administrative assessment. The evidence indicates, however, that the producer Class II price under the Lowell-Lawrence order should be equivalent to the Boston country plant price.

A handler excepted to the continuance of the alternate butterfat value based on the Chicago butter price. No specific proposal for elimination of this alternative value was in the hearing notice. Testimony on this matter at the hearing was not comprehensive. The provision should not be deleted on the basis of this record.

2. *Formula factors to be used in determining butterfat differentials.* It was proposed at the hearing that the factors used in determining the butterfat differential be changed so that the resulting differential would conform more closely to the butterfat differential used under the Boston milk order. The butterfat differential used in determining prices for milk testing above or below 3.7 percent butterfat under the Boston order is computed by deducting from the price of $\frac{1}{10}$ pound of butterfat in 40-percent cream, the cost of shipping butterfat in the form of cream for the mileage distance of 201–210 miles. This distance represents about the midpoint of the Boston milk supply area. The butterfat differential under the Boston order is applicable, however, in each zone at the same rate.

In the Lowell-Lawrence market, milk is received principally at city plants, and therefore a deduction for the cost of shipping cream is not applicable to the butterfat value. The record does not

support any change in the computation of the butterfat differential.

3. *Diversion of producer's milk to another plant.* A handler proposed that milk which a handler ordinarily receives at one of his plants from certain producers, and which is temporarily diverted to another one of his plants at which he does not otherwise receive milk from producers, should be considered as received at the plant to which the producers ordinarily deliver and as moved to the second plant.

The order already has a similar provision relating to diversion of milk of certain producers from the plant of one handler to the plant of another handler, but does not cover the case of diversion between plants belonging to the same handler. A proposal made by the market administrator would cover all such cases of diversion of milk between plants under a proposed definition of "producer." Under this proposal, the term "producer" would include a dairy farmer who ordinarily delivers milk to a producer milk plant, although the handler actually causes the milk of such dairy farmer to be delivered to another plant, if the handler reports such milk as received at the producer milk plant to which ordinarily delivered.

The record indicates that such a provision should be incorporated in the order so as to facilitate movement of milk between plants for the purpose of adjusting for short-time variations in supply and requirements.

4. *Revision of definitions.* Revisions of the various definitions set forth in the order, and the addition of some new definitions, was proposed by the market administrator. In general, the revised definitions do not effect any substantive change in the regulations under the order. The exceptions to this are: (1) Inclusion in the producer definition of a general provision that milk of producers temporarily diverted shall be considered as delivered to the plant to which the producers ordinarily deliver; (2) deletion of the references to volume of milk handled from the producer-handler definition. The first of these changes is an expansion of the present provision in the order providing that producers whose milk is temporarily diverted from one handler to another handler shall be considered as delivering to the plant to which they ordinarily deliver. The stipulations as to volume of milk handled, in the producer-handler definition, have never affected the status of any person regulated under the order.

The addition of the definitions for "dairy farmer", "city plant", "country plant", "milk", "cream", "skim milk", in a form similar to those used in the Boston order, will aid in setting forth the various provisions of the order. The use of the terms "producer milk plant" and "regulated plant", which are steps in the definition of the term "producer", serve to gather together into one place the various qualifications now implied throughout the order.

The proposed revised and new definitions should be adopted as proposed.

5. *Classification of milk.* Proposals made by the market administrator would reword the classification section of the order, making use of the new definitions, and would add a new section which would include detailed rules for the assignment to Class I or Class II of receipts at a regulated plant from any other plant. These proposals are intended to make no change in the actual classification of milk regulated under the order, except in the case of milk or milk products transferred between plants.

The order presently provides that transfers of milk or skim milk from the plant of one handler to the plant of another handler may be classified by the seller, or if the seller submits no report, may be classified by the buyer, with the proviso that no greater quantity of the transfer shall be Class II than the total milk or skim milk used by the buyer as Class II. The proposed language would be more general in application, and would cover transfers of fluid milk products from one plant to another regardless of whether the two plants are operated by the same or different handlers.

One handler proposed that handlers be allowed to ship milk from a plant not otherwise subject to the order as Class II milk for use at a plant handling milk from Lowell-Lawrence producers, without involving the milk shipped, or the originating plant, under regulation. It appears that the purpose of this proposal would be accomplished under the language proposed by the market administrator. Under the proposed language, the handler could classify the transfer as Class II up to the amount of Class II at the receiving plant (excepting receipts of cream), and the shipment would therefore not involve the originating plant under regulation, since a "regulated plant", according to proposed definition, supplies Class I milk to the marketing area. The proposed language would therefore allow a handler greater flexibility in the use of his facilities for processing Class II milk, and greater flexibility in filling Class II requirements in the market.

Use of the definitions of milk, cream, skim milk, and fluid milk products, in the classification language, makes clear in each instance whether only whole milk or particular milk products are to be classified, while heretofore "milk" has been used in some places in the order to mean both whole milk and milk products.

One representative of producers testified that there is some movement of milk from the Lowell-Lawrence market to the Fall River market, and requested that such milk should not be classified as Class II milk under the Lowell-Lawrence order if it is classified as Class I under the Fall River order. In order to assure Lowell-Lawrence producers full value for their milk, the order should specify that Class II classification by the person operating the shipping plant, of milk moved to a plant under another Federal order, shall be limited to transfers of milk to a plant under the Boston order. The above-mentioned and other proposed changes in the classification provisions will facilitate administration of the order and should be incorporated in the order.

6. *Allocation of Class I milk.* A proposal made by the market administrator would amplify the present provision, in the class price section of the order, which provides for the allocation among handler's plants of Class I milk disposed of from a plant within the 20-mile zone. Some handlers disposing of Class I milk in the marketing area operate only a plant or plants outside the 20-mile zone. Also, such allocation would logically apply only to a handler's net Class I milk after deducting receipts from other handlers. Such allocation should be extended to cover all net Class I milk disposed of by the handler, which should be assigned first to producer receipts at city plants, and then to fluid milk products other than cream shipped from other plants in order of nearness to the marketing area.

7. *Rearrangement of provisions.* Elimination of § 934.8 of the order entitled "Application of Provisions" by incorporating the effects thereof in other parts of the order, the insertion of a new section on assignment of receipts to Class I or Class II, and other changes specified herein require rearrangement and renumbering of some of the sections and subsections of the order.

The order provides for automatic adjustment of the level of the city Class I price for changes in the freight rates on milk from country plants. Increases in freight rates have resulted in a 6-cent per hundredweight increase in Class I prices since the schedule presently set forth in the order was issued.

The schedule should be revised to show the prices actually effective for various levels of the Class I formula index.

Although the order requirement that handlers maintain records of disposition of milk and milk products implies the maintenance of inventory records, the order should state this requirement specifically.

These minor revisions and rearrangements of provisions should be made, and the entire order should be rewritten to incorporate such changes.

8. *General.* (a) The proposed marketing agreement and the order, as amended and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The proposed marketing agreement and the order, as amended and as hereby proposed to be further amended, regulates the handling of milk in the same manner and is applicable only to persons in the respective classes of industrial and commercial activity specified in the said tentatively approved marketing agreement upon which hearings have been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to section 2 and section 8 (e) of the act are not reasonable in view of the price of feed, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the order, as amended and as hereby proposed to be further amended, are such prices as

will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing Agreement Regulating the Handling of Milk in the Lowell-Lawrence, Massachusetts, Marketing Area" and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Lowell-Lawrence, Massachusetts, Marketing Area" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as amended, and as proposed to be further amended by the attached order which will be published with this decision.

This decision filed at Washington, D. C. this 17th day of March 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order,[1] *Amending the Order, as Amended, Regulating the Handling of Milk in the Lowell-Lawrence, Massachusetts, Marketing Area*

§ 934.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure, as amended, governing the formulation of marketing agreements and orders (7 CFR, Supps. 900.1 et seq.), a public hearing was held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Lowell-Lawrence, Massachusetts, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as amended and as hereby further amended, and all of the terms and conditions of said order, as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(2) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the order, as amended and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as amended and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which hearings have been held.

Order Relative to Handling

It is hereby ordered, That on and after the effective date hereof, the handling of milk in the Lowell-Lawrence, Massachusetts, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended; and the aforesaid order, as amended, is hereby further amended to read as follows:

§ 934.1 *Definitions.* The following words and phrases shall have the following meanings unless the context requires otherwise:

(a) *General.* (1) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended:

(2) "Lowell-Lawrence, Massachusetts, marketing area", also referred to as the "marketing area", means the territory included within the boundary lines of the following Massachusetts cities and towns:

Andover, Billerica, Chelmsford, Dracut, Lawrence, Lowell, Methuen, North Andover, Tewksbury, Tyngsboro, Westford.

(3) "Boston order" and "New York order" mean the respective orders, as amended, issued by the Secretary, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, and the New York metropolitan marketing area.

(4) "Month" means a calendar month.

(b) *Persons.* (1) "Person" means any individual, partnership, corporation, association, or any other business unit.

(2) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and perform the duties of the Secretary of Agriculture.

(3) "Dairy farmer" means any person who delivers milk of his own production to a plant, except a producer-handler with respect to his deliveries in packaged form to another handler.

(4) "Producer" means any dairy farmer who delivers milk of his own production to a producer milk plant. The term shall also apply to a dairy farmer who ordinarily delivers milk to a producer milk plant, with respect to milk which the handler who operates the producer milk plant diverts to another plant, if that handler reports the milk as received from a producer and as moved to the other plant. The term shall not apply to a dairy farmer who is a producer under the Boston order, with respect to milk diverted from the plant subject to that order to which the dairy farmer ordinarily delivers.

(5) "Association of producers" means any cooperative marketing association which the Secretary determines to be qualified pursuant to the provisions of the act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

(6) "Handler" means any person who engages in the handling of milk or other fluid milk products which are received at any plants from which fluid milk products are disposed of, directly or indirectly, in the marketing area.

(7) "Producer-handler" means any person who is both a handler and a dairy farmer, and who receives no milk from other dairy farmers except producer-handlers.

(c) *Plants.* (1) "Receiving plant" means any plant currently used for receiving, weighing or measuring, sampling, and cooling milk received there directly from dairy farmers' farms and for washing and sterilizing the milk cans in which such milk is received, and at which are currently maintained weight sheets or other records of dairy farmers' deliveries.

(2) "Producer milk plant" means any receiving plant which is also a regulated plant, except the plant of a producer-handler.

(3) "Regulated plant" means any plant from which fluid milk products which are classified as Class I milk are disposed of, directly or indirectly, in the marketing area, except a plant at which the handling of milk is regulated under the Boston or New York orders or a plant located outside the New England States and New York.

(4) "City plant" means any plant which is located within 20 miles of the City Hall in Lowell or Lawrence.

(5) "Country plant" means any plant which is located beyond 20 miles of the City Halls in Lowell and Lawrence.

(d) *Milk and milk products.* (1) "Milk" means the commodity received from a dairy farmer at a plant as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of 1 percent but less than 16 percent, frozen milk, and reconstituted milk.

(2) "Cream" means that portion of milk, containing not less than 16 percent of butterfat, which rises to the surface of milk on standing, or is separated from

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

it by centrifugal force. The term "cream" also includes sour cream, frozen cream, and milk and cream mixtures containing 16 percent or more of butterfat.

(3) "Skim milk" means that fluid product of milk which remains after the removal of cream, and which contains less than one-half of 1 percent of butterfat.

(4) "Fluid milk products" means milk, flavored milk, cream, skim milk, flavored skim milk, cultured skim milk, and buttermilk, either individually or collectively.

§ 934.2 *Market administrator*—(a) *Designation.* The agency for the administration of this order shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to this order:

(1) To administer its terms and provisions;

(2) To make rules and regulations to effectuate its terms and provisions;

(3) To receive, investigate, and report to the Secretary complaints of violations of its terms and provisions; and

(4) To recommend to the Secretary amendments to it.

(c) *Duties.* The market administrator, in addition to the duties described in the other sections of this order, shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with sureties thereon satisfactory to the Secretary;

(2) Pay, out of the funds provided by § 934.10, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office;

(3) Keep such books and records as will clearly reflect the transactions provided for in this order and surrender the same to his successor, or to such other person as the Secretary may designate;

(4) Unless otherwise directed by the Secretary, publicly disclose, within 30 days after such nonperformance becomes known to the market administrator, the name of any person who, within 2 days after the date on which he is required to perform such acts, has not

(i) Made reports pursuant to § 934.5 or

(ii) Made payments pursuant to § 934.8; and may at any time thereafter so disclose any such name if authorized by the Secretary to do so;

(5) Prepare and disseminate for the benefit of producers, consumers, and handlers, statistics and information concerning the operation of this order; and

(6) Promptly verify the information contained in the reports submitted by handlers.

§ 934.3 *Classification of milk and milk products*—(a) *Classes of utilization.* All milk received from producers, and all other milk and milk products which it is necessary to classify in order to classify milk received from producers, shall be classified in accordance with this section. Subject to the other paragraphs of this section, the classes of utilization shall be as follows:

(1) Class I milk shall be all fluid milk products the utilization of which is not established as Class II milk.

(2) Class II milk shall be all fluid milk products the utilization of which is established:

(i) As being sold, distributed, or disposed of other than as or in milk; and other than as or in flavored milk or flavored skim milk, buttermilk, or cultured skim milk, for human consumption; and

(ii) As plant shrinkage, not in excess of 2 percent of the volume handled.

(b) *Basis of classification.* (1) Except as otherwise provided in this section, all fluid milk products received by handlers shall be classified in accordance with their utilization at the last plant at which they are received by any person who distributes milk or manufactures milk products.

(2) Except as otherwise provided in § 934.4 (f), cream shall be classified as Class II milk with respect to each handler who disposes of it in the form of cream.

(3) The burden of proof rests upon the handler who receives milk from producers to account for the milk, and to prove that it should not be classified as Class I milk.

(4) If a handler reports no Class II milk for a given month, and does not submit a revised report regarding classification of his milk within one month after filing the original report, all of his producer receipts during the given month shall remain classified as Class I milk.

(c) *Movements of fluid milk products, except cream, between plants.* (1) Fluid milk products, except cream, which are moved from a handler's plant to a regulated plant or to a plant subject to the Boston order shall be classified as reported by the handler operating the shipping plant, or, if he submits no report, shall be classified as reported by the handler operating the plant to which the fluid milk products are moved. However, no greater quantity of fluid milk products shall be classified as Class II milk under this subparagraph than the total quantity of Class II milk, after deducting receipts of cream, at the plant to which the fluid milk products are moved.

(2) Fluid milk products, except cream, which are moved from a regulated plant to any unregulated plant, except a plant subject to the Boston order, shall be classified as Class I milk, up to the total quantity of the same form of fluid milk products which is utilized as Class I milk at the unregulated plant.

§ 934.4 *Assignment of receipts from other plants*—(a) *Application of this section.* For the purpose of determining the classification of milk received from producers, all receipts of milk and milk products at a regulated plant from any other plant shall first be assigned to Class I milk or Class II milk in accordance with this section.

(b) *General provisions.* Except as otherwise provided in this section, all receipts of fluid milk products at a regulated plant shall be assigned to the class in which it is reported by the handler who operates the shipping plant, or if that handler submits no report, by the handler who operates the plant to which the fluid milk products were moved.

(c) *Assignment of receipts from plants at which the handling of milk is regulated under the Boston or New York orders.* Fluid milk products received from plants at which the handling of milk is regulated under the Boston or New York orders shall be assigned to Class I milk to the extent that the fluid milk products so received are classified as Class I milk under the Boston order, or as Class I-A milk, Class I-B milk, or Class I-C milk under the New York order. Any remaining quantity of such receipts shall be assigned to Class II milk.

(d) *Assignment of receipts from plants located outside the New England States and New York.* Fluid milk products received from plants located outside the New England States and New York shall be assigned to Class I milk if received in the form of milk, and to Class II milk if received in any form other than milk.

(e) *Limitation on assignment of receipts to Class II milk.* Notwithstanding the provisions of the preceding paragraphs of this section, no greater quantity of receipts of fluid milk products, other than cream, at any regulated plant from other plants shall be assigned to Class II milk than the total quantity of fluid milk products, other than cream, classified as Class II milk at the regulated plant.

(f) *Receipts of cream, and of milk products other than fluid milk products.* All receipts of cream, and of milk products other than fluid milk products, shall be assigned to Class II milk to the extent of Class II utilization by the handler.

§ 934.5 *Reports of handlers*—(a) *Monthly reports of handlers who receive milk from producers.* On or before the 8th day after the end of each month, each handler who receives milk from producers shall, with respect to the fluid milk products received by the handler during the month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(1) The receipts of milk at each producer milk plant from producers, including the quantity, if any, received from his own production;

(2) The receipts of fluid milk products at each plant from any other source, assigned to classes pursuant to § 934.4; and

(3) The respective quantities which were sold, distributed, or used, including sales to other handlers, classified pursuant to § 934.3.

(b) *Reports of handlers who receive no milk from producers.* Handlers who receive no milk from producers shall make reports to the market administrator at such time and in such manner as the market administrator may require.

(c) *Reports regarding individual producers.* (1) Within 7 days after a pro-

ducer moves from one farm to another, or starts or resumes deliveries to a handler's plant, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant locations involved. The report shall also state, if known, the plant to which the producer has been delivering immediately prior to starting or resuming deliveries.

(2) Within 7 days after the 5th consecutive day on which a producer has failed to deliver to a handler's plant, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the last delivery was made, and the farm and plant locations involved. The report shall also state, if known, the reason for the producer's failure to continue deliveries.

(d) *Reports of payments to producers.* Each handler who receives milk from producers shall submit to the market administrator within 5 days after his request, made not earlier than 14 days after the end of the month, his producer pay roll for such month, which shall show for each producer:

(1) The daily and total pounds of milk delivered with the average butterfat test thereof; and

(2) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

(e) *Maintenance of records.* Each handler shall maintain detailed and summary records showing all receipts, movements, and disposition of milk and milk products during the month, and the quantities of milk and milk products on hand at the end of the month.

(f) *Verification of reports.* For the purpose of ascertaining the correctness of any report made to the market administrator as required by this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Examine those records which are necessary for the verification of the information contained in such reports;

(2) Weigh, sample, and test milk and milk products; and

(3) Make such examination of records, operations, equipment, and facilities as the market administrator deems necessary.

(g) *Retention of records.* All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain, except that all such books and records pertaining to transactions before August 1, 1946, shall be retained until October 1, 1949: *Provided,* That if, within such three-year period or before October 1, 1949, whichever is applicable, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 934.6 *Minimum class prices*—(a) *Class I price; city plants.* Each handler shall pay producers, at the time and in the manner set forth in § 934.8, for Class I milk delivered by them to such handler's city plant, not less than the price per hundredweight determined for each month pursuant to this paragraph. In determining the Class I price for each month the latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the following computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday, the latest reported figures available on the next succeeding work day shall be used.

(1) Divide by 0.98 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the year 1926 as the base period.

(2) Divide by 3 the sum of the three latest monthly indexes of department stores sales in the Boston Federal Reserve District adjusted for seasonal variations, as reported by the Federal Reserve System, with the years 1935–39 as the base period, and divide the result so obtained by 1.26.

(3) Compute an index of grain-labor costs in the Boston milkshed in the following manner:

(i) Compute the simple average of the four latest weekly average retail prices per ton of dairy ration in the Boston milkshed, as reported by the United States Department of Agriculture, divide by 0.5044, and multiply by 0.6.

(ii) Compute the weighted average of the monthly composite farm wage rates for the latest available month for Maine, Massachusetts, New Hampshire, and Vermont as reported by the United States Department of Agriculture, divide by 0.5952, and multiply by 0.4. In computing the weighted average, weight the respective rates as follows: Maine, 10; Massachusetts, 6; New Hampshire, 7; and Vermont, 77.

(iii) Add the results determined pursuant to subdivisions (i) and (ii) of this subparagraph.

(4) Divide by 3 the sum of the final results computed pursuant to the preceding subparagraphs of this paragraph. Express the result as a whole number by dropping fractions of less than one-half or by raising fractions of one-half or more to the next whole number. The result shall be known as the formula index.

(5) Subject to the succeeding subparagraphs of this paragraph, the Class I price per hundredweight shall be as shown in the following table:

CLASS I PRICE SCHEDULE

Formula index	Class I price per hundredweight		
	Jan.-Feb.-Mar.-July-Aug.-Sept.	Apr.-May-June	Oct.-Nov.-Dec.
50–56	$2.21	$1.77	$2.65
57–63	2.43	1.99	2.87
64–70	2.65	2.21	3.09
71–77	2.87	2.43	3.31
78–84	3.09	2.65	3.53
85–90	3.31	2.87	3.75
91–97	3.53	3.09	3.97
98–104	3.75	3.31	4.19
105–111	3.97	3.53	4.41
112–118	4.19	3.75	4.63
119–125	4.41	3.97	4.85
126–132	4.63	4.19	5.07
133–139	4.85	4.41	5.29
140–146	5.07	4.63	5.51
147–152	5.29	4.85	5.73
153–159	5.51	5.07	5.95
160–166	5.73	5.29	6.17
167–173	5.95	5.51	6.39
174–180	6.17	5.73	6.61
181–187	6.39	5.95	6.83
188–194	6.61	6.17	7.05

If the formula index is more than 194 the price shall be increased at the same rate as would result from further extension of this table at the rate of extension in the six highest index brackets.

(6) For any month after December 1948, the Class I price shall be 44 cents more than the price prescribed in subparagraph (5) of this paragraph if, under the provisions of the Boston order, less than 33 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this subparagraph would cause the Class I price to be more than 88 cents above the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent increase as will result in a Class I price equal to the Class I price for the same month of the preceding year plus 88 cents.

(7) For any month after December 1948, the Class I price shall be 44 cents less than the price prescribed in subparagraph (5) of this paragraph if, under the provisions of the Boston order, more than 41 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this subparagraph would cause the Class I price to be more than 88 cents below the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent reduction as will result in a Class I price equal to the Class I price for the same month of the preceding year minus 88 cents.

(8) Notwithstanding the provisions of the preceding subparagraphs of this paragraph, the Class I price for any of the months of March through June of each year shall not be higher than the Class I price for the immediately preceding month, and the Class I price for any of the months of September through December of each year shall not be lower than the Class I price for the immediately preceding month.

(9) The Class I price determined under the preceding subparagraphs of this

paragraph shall be increased or decreased to the extent of any increase or decrease in the rail tariff for the transportation of milk in carlots in tank cars for mileage distances of 201–210 miles, inclusive, as published in the New England Joint Tariff, M–5, and supplements thereto. The adjustment shall be made to the nearest one-half cent per hundredweight, and shall be effective in the first complete month in which such increase or decrease in the rail tariff applies.

(b) *Class I prices; country plants.* Each handler shall pay producers, at the time and in the manner set forth in § 934.8, for Class I milk delivered by them to such handler's country plant, not less than the applicable price for hundredweight determined pursuant to this paragraph.

(1) For milk delivered by producers to such handler's country plant located within 40 miles of the City Hall in Lowell or Lawrence, the price per hundredweight during each month shall be the price effective pursuant to paragraph (a) of this section, less 17 cents per hundredweight.

(2) For milk delivered by producers to such handler's country plant located beyond 40 miles of the City Halls in Lowell and Lawrence, the price per hundredweight during each month shall be the price effective pursuant to paragraph (a) of this section, less an amount per hundredweight equal to the sum of 13 cents and the average of the freight rates (considering 85 pounds to one 40-quart can), from the railroad shipping point for such handler's plant to Lowell and to Lawrence, calculated according to the lowest applicable rail tariffs for the transportation in carload lots of milk in 40-quart cans.

(c) *Allocation of Class I milk to plants.* For the purpose of this section, each handler's Class I milk during each month, after deducting his receipts of Class I milk from other handlers, shall be considered to have been first, that milk which was received directly from producers at his city plant, and then that milk received from producers, which was shipped as fluid milk products, other than cream, from his country plants, in the order of the nearness of the plants to the City Hall in Lowell or Lawrence.

(d) *Class II price; city plants.* Each handler shall pay producers, at the time and in the manner set forth in § 934.8, for Class II milk delivered by them to such handler's city plant, not less than the price per hundredweight determined for each month pursuant to this paragraph.

(1) Divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the month during which such milk is delivered.

(2) For any month for which no cream price as described in subparagraph (1) of this paragraph is reported, multiply by 1.4 the average price reported for such month by the United States Department of Agriculture for U. S. Grade A (U. S. 92-score) butter at wholesale in the Chicago market.

(3) Multiply by 3.7 the amount determined pursuant to subparagraph (1) or (2) of this paragraph, whichever is applicable.

(4) Using the midpoint in any range as one price, compute the average of the prices per pound of roller process nonfat dry milk solids suitable for human consumption, in barrels, in carlots, as published during the month by the United States Department of Agriculture for New York City, subtract one-half cent, and multiply the remainder by 7.5.

(5) Add the results obtained in subparagraphs (3) and (4) of this paragraph, and from the sum subtract the amount shown below for the applicable month. The result is the Class II price per hundredweight for milk received from producers at city plants.

Month:	*Amount (cents)*
January and February	57.5
March and April	69.5
May and June	75.5
July	69.5
August and September	63.5
October, November, and December	57.5

(e) *Class II prices; country plants.* Each handler shall pay producers, at the time and in the manner set forth in § 934.8, for Class II milk delivered by them to such handler's country plant, not less than the price per hundredweight determined pursuant to paragraph (d) of this section minus the amount shown in the following table for the railroad freight mileage zone for the average of the distances to Lowell and to Lawrence from the railroad shipping point for such handler's plant:

Freight zone (miles):	*Amount (cents per cwt.)*
21–50	2.0
51–100	3.0
101–150	4.5
151–200	6.0
201–250	7.0
251–300	8.0
301–350	9.0
351 and over	9.5

(f) *Use of equivalent prices in formulas.* If for any reason a price for any milk product specified by this order for use in computing class prices and for other purposes is not reported or published in the manner described by the order, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price which is specified.

(g) *Announcement of Class I price.* The market administrator shall publicly announce the Class I price for each month, as computed under paragraph (a) of this section, on the 25th day of the preceding month, except that if such 25th day is a Sunday or legal holiday, he shall announce the Class I price on the next succeeding work day.

§ 934.7 *Composite prices to producers*—(a) *Computation of value of milk.* The value of the milk received from producers during the month by each handler shall be computed by the market administrator in the following manner:

(1) Multiply the quantity of such milk in each class by the price applicable in accordance with § 934.6.

(2) Add together the resulting value of each class.

(b) *Computation of composite price.* The composite price payable pursuant to § 934.8 by each handler to producers for milk received from them during the month shall be computed by the market administrator in the following manner:

(1) Add to the total value computed in accordance with paragraph (a) of this section the amount of the differential applicable in accordance with § 934.8 (d).

(2) Subtract any amount which the handler is required to pay on the milk under the provisions of the Boston order because it represents outside milk as defined in § 904.1 (d) (6) (iii) of this chapter.

(3) Divide the remaining value by the total quantity of milk received by the handler from producers. The result is the handler's composite price for milk, containing 3.7 percent butterfat, which he received from producers at his city plant.

(c) *Announcement of composite prices.* For each month, the market administrator shall mail to all handlers who receive milk from producers and shall publicly announce prices resulting from the computations pursuant to paragraphs (a) and (b) of this section, and other related information, as follows:

(1) On or before the 12th day of the succeeding month, he shall announce the composite price, the Class II price, and the butterfat differential.

(2) On or before the last day of the succeeding month, he shall announce the total quantity and value of Class I milk and Class II milk included in such computations.

§ 934.8 *Payments to producers*—(a) *Time and method of payments.* On or before the 18th day after the end of each month, each handler shall make payment, subject to the differentials set forth in this section, for the total value of milk received by him from producers during such month, as computed in accordance with § 934.7 (a) as follows:

(1) To each producer, except as provided in subparagraph (2) of this paragraph, at not less than the composite price per hundredweight computed for such handler pursuant to § 934.7 (b).

(2) To producers who are members of an association of producers, a total amount equal to not less than the sum of the individual payments otherwise payable to such producers under subparagraph (1) of this paragraph.

(b) *Correction of errors in payments.* Errors in making any of the payments required by this section shall be corrected not later than the date for making payments next following the determination of such errors. Any correction affecting all producers delivering to any handler during the month in which such error occurred shall be corrected as the market administrator shall determine to be equitable, either by

(1) Adjustment of the account of each individual producer who delivered during such month, on the basis of a recomputation of the price of such handler, or

(2) Addition or subtraction of the amount of such correction to or from

the value of all milk received by such handler in the month during which such error was determined, computed as set forth in § 934.7 (a).

(c) *Butterfat differential.* Each handler shall, in making payments to each producer for milk received from him, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator as follows:

(1) Divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the period between the 16th day of the preceding month and the 15th day inclusive of the month during which such milk is delivered, subtract 1.5 cents, and divide the result by 10.

(2) If the cream price described in subparagraph (1) of this paragraph is not reported for such period, multiply by 1.4 the average price reported for that period by the United States Department of Agriculture for U. S. Grade A (U. S. 92-score) butter at wholesale in the Chicago market, subtract 1.5 cents, and divide the result by 10.

(d) *Country plant differentials.* (1) With respect to milk delivered by producers to a country plant located within 40 miles of the City Hall in Lowell or Lawrence, the payments to be made by handlers pursuant to paragraph (a) of this section shall be subject to a deduction of 17 cents per hundredweight.

(2) With respect to milk delivered by producers to a country plant located beyond 40 miles of the City Halls in Lowell and Lawrence, the payments to be made by handlers pursuant to paragraph (a) of this section shall be subject to a deduction per hundredweight equal to the sum of 13 cents and the average of the freight rates from the railroad shipping point for the handler's plant to Lowell and to Lawrence, calculated according to the lowest applicable rail tariffs for the transportation in carload lots of milk in 40-quart cans.

(e) *Statement to producers.* In making the payments required by this section, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of paragraphs (a), (c), and (d) of this section;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under § 934.9, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

§ 934.9 *Marketing services*—(a) *Marketing service deduction.* In making payments to producers pursuant to § 934.8, each handler shall, with respect to all milk delivered by each producer during each month, except as set forth in paragraph (b) of this section, deduct 3 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, and shall, on or before the 18th day after the end of each month, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator only in providing for market information to, and for verification of weights, samples, and tests of milk delivered by, such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk delivered by, such producers.

(b) *Marketing service deductions with respect to members of a producers' cooperative association.* In the case of producers who are members of an association of producers which is actually performing the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from payments made pursuant to § 934.8 as may be authorized by such producers and pay over, on or before the 18th day after the end of each month, such deduction to such associations.

§ 934.10 *Expense of administration.* Within 18 days after the end of each month, each handler shall make payment to the market administrator of his pro rata share of the expense of administration of this order. The payment shall be at the rate of 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe. For each month, the payment shall apply to the handler's receipts of milk from producers, including receipts from his own production, and the Class II milk, other than cream, which is received by him at a regulated plant from an unregulated plant. However no payment shall apply on his receipts from any plant at which the handling of milk is regulated under the Boston or New York orders.

§ 934.11 *Effective time, suspension, and termination*—(a) *Effective time.* The provisions of this order, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to paragraph (b) of this section.

(b) *Suspension or termination.* The Secretary may suspend or terminate this order whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this order, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

(d) *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this order, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this order, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 934.12 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this order.

§ 934.13 *Termination of obligation.* The provisions of this section shall apply to any obligation under this order for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c (15) (A) of the act or before a court.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this order, to make available to the market administrator or his representatives all books or records required by this order to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such

obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

[F. R. Doc. 49-2141; Filed, Mar. 22, 1949; 8:47 a. m.]

[7 CFR, Part 936]

FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

DECISION WITH RESPECT TO PROPOSED FURTHER AMENDMENTS TO THE MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders, as amended (7 CFR and Supps. 900.1 et seq.; 13 F. R. 8585), a public hearing was held at Sacramento, California, beginning on December 6, 1948, after notice thereof published in the FEDERAL REGISTER (13 F. R. 7356, 7417), upon proposed further amendments to Marketing Agreement No. 85, hereinafter referred to as the "marketing agreement," and Order No. 36 (7 CFR, Cum. Supp., Part 936), hereinafter referred to as the "order," regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. and Sup. I 601 et seq.).

Upon the basis of the evidence introduced at the hearing, and the record thereof, the Acting Assistant Administrator, Production and Marketing Administration, on February 14, 1949, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (14 F. R. 697, 840). No exception to said recommended decision was filed.

Material issues. The material issues presented on the record of the hearing were concerned with amending the marketing agreement and order to provide, with respect to fresh Bartlett pears, plums, and Elberta peaches produced in the State of California:

(1) That, for the purpose of the marketing agreement and order program, (a) plums of the Beauty, Formosa, Santa Rosa, and Climax varieties be considered as a separate commodity, and (b) plums of all other varieties be considered as a separate commodity;

(2) For the restriction of the scope of section 5 of the marketing agreement and § 936.5 of the order to the regulation of daily shipments of Bartlett pears;

(3) For combining, with respect to the assessments to be paid by the handlers of the fruits covered by the marketing agreement and order, the general overhead expenses and the expenses incurred in administering regulations, so that a single rate of assessment may be established as the respective shipper's pro rata share of the expenses for each such fruit handled during each season;

(4) For the issuance of exemption certificates when mimimum standards of quality and maturity are in effect;

(5) That the definition of the term "season" be changed so as to constitute the 12-month period beginning on March 1 of each year and ending on the last day of February of the following year;

(6) For the deletion of the requirement that confidential employees be so designated; and

(7) For the modification, suspension, or termination by the Secretary of any regulation theretofore issued and then in effect.

Findings and conclusions. The findings and conclusions relating to the material issues are based upon the evidence introduced at the hearing and the record thereof, and are as follows:

(1) The marketing agreement and order should be amended to provide for the segregation of all varieties of California plums into two separate plum categories or commodities. One such commodity should consist of plums of the Beauty, Formosa, Santa Rosa, and Climax varieties (hereinafter referred to as the "early varieties"), and the other commodity should consist of plums of all other varieties (hereinafter referred to as the "late varieties"). This segregation is consistent with the time of maturity of the plums of the respective categories which governs the time when the early varieties and the late varieties are handled.

Evidence adduced at the hearing shows that in recent years there has been a marked increase in plantings primarily of the early varieties, in producing areas of California where plums of the same variety mature at an earlier date than in other areas. Due to the increase in plantings of early varieties in these early producing areas and the resultant increase of shipments of such varieties, the pattern of shipments of all varieties of plums from California has been so altered that shipments and sales of the early varieties now show a marketing season separate and distinct from that of the late varieties. For example, shipments of early varieties during the three seasons ending in 1947 were 55 percent greater than during the three seasons 1939 through 1941, while shipments of late varieties had increased only 6 percent over the same period. At the same time, shipments from the early producing areas constituted 77 percent of the shipments of early varieties during the 1946 and 1947 seasons, as compared with 66 percent of such shipments during the 1940 and 1941 seasons.

Plums of the Beauty, Formosa, Santa Rosa, and Climax varieties constitute what is tantamount to a distinct commodity from an economic point of view. Statistics introduced and made part of the record show that, since the inception of the program, the trend in market prices of the early varieties and the late varieties, and the year to year changes in prices of such plums, were not always in the same direction.

Commodities which normally are competitive to the early varieties of plums are not those which are competitive to the late varieties of plums. In normal seasons, shipments of cherries, apricots, peaches, and nectarines from Pacific Coast states compete primarily with early varieties of plums, whereas Pacific Coast shipments of pears, early apples, grapes, and fresh prunes compete primarily with shipments of the late varieties. Similarly, shipments of Southeastern peaches normally are made at the same time shipments of early plums originate from California, whereas shipments of peaches from the remainder of the United States compete primarily with shipments of the late varieties. Shipments of the late varieties of California plums normally are made during the period when fruits and berries are harvested in the midwestern and eastern consuming areas in the United States, while shipments of early varieties of California plums normally are made before the midwestern and eastern fruit harvest is under way. Differences in the volumes, and times of harvest, of the different fruits competitive to the early and the late varieties of California plums have caused sharply contrasting marketing conditions to exist during the shipping seasons of the respective varieties.

The marketing practices differ substantially for the early varieties of California plums as compared with the late varieties. As a rule, substantial quantities of the early varieties are sold for cash by growers. Sales on an f. o. b. basis are of considerable importance, and shipments usually are made of straight carloads of single varieties of plums in the case of the early varieties. Of the late varieties, practically no fruit is sold by producers for cash, very few f. o. b. sales transactions are found, and practically all sales are made of carloads containing numerous varieties.

Under the marketing agreement and order program, in which all varieties of California plums have been considered as a single commodity, a single parity price was determined for all varieties of plums. In view of the fact that the early and late varieties have been handled generally under sharply contrasting marketing conditions, it has been ex-

tremely difficult to ascertain, prior to the issuance of regulations during a particular season, whether or not the season price to producers of all varieties of plums would average at or below the parity level. Regulatory orders, during two of the past three seasons, were terminated before the completion of the respective marketing seasons. In each of these instances, while the suspension of regulation took place on the basis that the seasonal average price for all varieties of plums would exceed the seasonal parity price, such action occurred when current prices, and the consequent seasonal average price, to producers of plums of the late varieties were below the parity level for all varieties. It was inequitable, therefore, to producers of plums of the late varieties to require that the existence of regulatory orders applicable to such varieties be dependent, in part, upon the level of prices for the early varieties of plums.

The provisions of the marketing agreement and order, as proposed to be amended, will provide the proper means for regulating separately shipments of early varieties and late varieties so as to effectuate the declared purposes of the act. The early and late varieties of plums should be included in the same marketing agreement and order program which regulates the handling of fresh Bartlett pears, plums, and Elberta peaches, grown in the State of California, because the same growers, in many instances, produce several of these deciduous fruits; most of the handlers ship all of these deciduous fruits; and there are many problems common to all of such fruits. Shipments of both the early and late varieties of plums grown in the State of California are primarily interstate in character.

In addition, the seasonal average prices which may reasonably be expected to prevail in the future for both early and late varieties of plums will be at levels below their respective parity levels.

The provisions of section 1 of the marketing agreement and § 936.1 *Definitions* of the order, as proposed to be amended, are applicable to the early varieties and the late varieties of plums. The State of California should continue to be the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act, because both early and late varieties of plums are produced in all of the principal plum producing areas—approximately 45 counties—throughout the State. Also, the districts established in the marketing agreement and order should remain the same with respect to early and late varieties since such districts identify the principal commercial deciduous fruit producing areas in the State.

The Plum Commodity Committee, established under the marketing agreement and order program, should continue as the commodity committee to recommend regulations to the Secretary, to submit budgets of expenses to the Control Committee, and to make such rules and regulations as may be necessary to effectuate the terms and provisions of the marketing agreement and order with respect to all varieties of California plums. Most producers have orchards in which plums of the early varieties and late varieties are grown, although the proportions of these varieties vary in the respective districts. This is because most varieties of plums are self-sterile; and therefore different varieties of plums must be grown in the same orchard to achieve proper pollination and maximum fruit production. The total tonnage of both early and late varieties of plums handled in each producing district should be the basis for determining the grower representation on the Plum Commodity Committee, and thence on the Control Committee. Furthermore, the competitive relationships in consuming markets of early varieties and late varieties should be taken into consideration in the recommendation of regulations for such varieties.

The Sales Managers' Committee, established under the marketing agreement and order program, should continue to attend the meetings of the Plum Commodity Committee when it considers regulation by grades and sizes and the establishment of minimum standards of quality and maturity for any variety of plums because the members of the Sales Managers' Committee are representatives of shippers who handle not only all varieties of plums but also the other California deciduous tree fruits covered by this program.

The regulation of shipments of early varieties and late varieties by grades or sizes, or both, will tend to effectuate the declared purposes of the act. Higher market prices consistently prevail for the better grades of plums. Furthermore, the market prices of plums of any variety show a unique and consistent correlation between size and price, with each larger size normally associated with a higher price, regardless of the quantities of the respective sizes sold. Marketing conditions affecting prices to producers of the early varieties and late varieties will tend to be improved through the limitation of shipments of the less preferred grades and sizes of the various varieties of plums. Sales of plums are made on a varietal basis; and, in the past, the regulation of shipments by grades and sizes has been by varieties. Under the program as proposed to be amended, the regulation of shipments should continue in the same manner. According to the hearing record, the 1948 seasonal average price for the early varieties was in excess of the parity level, while the reverse was true for the late varieties; and in future seasons the same or the converse may obtain. Under such circumstances, regulation by grades and sizes may be warranted only with respect to early varieties or late varieties, as the case may be, and regulation on the basis of minimum standards may be made effective for the remaining varieties during the same season.

The marketing agreement and order should authorize the establishment and maintenance in effect of such minimum standards of quality and maturity for early varieties and late varieties as will tend to effectuate such orderly marketing of the particular varieties of plums as will be in the public interest. Such action should be taken during any period when the seasonal average price exceeds the parity level for the early varieties or the late varieties, whichever is applicable. As in the case of regulation by grades and sizes, the minimum standards should, if appropriate, be established separately for each variety of plums.

The inspection and certification requirements of the marketing agreement and order should be coextensive in application with the changes resulting from the segregation of plums into early varieties and late varieties in order to achieve effective administration of the revised program. No changes in the provisions of the marketing agreement and order, other than those with respect to which the hearing was held, are required as a result of the segregation of plums into early varieties and late varieties.

(2) The scope of section 5 of the marketing agreement and § 936.5 of the order should be restricted to the regulation of daily shipments of Bartlett pears. These sections apply to both Bartlett pears and plums, and should be revised by deleting therefrom all references to the regulation of daily shipments of plums.

During recent seasons, the various varieties of plums have been harvested when possessing a greater degree of maturity than prior to the inception of the marketing agreement and order program. Improved handling techniques have been a decided factor resulting in an increased proportion of the fruit shipped being of such maturity. Due to this advanced maturity, and the concomitant greater perishability of the fruit, it is not deemed practicable to regulate daily shipments of plums. In fact, the regulation of daily shipments of plums, pursuant to the aforesaid sections, was never invoked.

(3) The marketing agreement and order should be amended to provide for the establishment, with respect to each fruit handled during a season, of a single rate of assessment as the respective shipper's pro rata share of the expenses incurred relative to such fruit in the administration of the program. The effect of this action will be to combine, for a particular fruit, the general overhead and the regulatory assessments provided for under the marketing agreement and order. This will allow greater flexibility in establishing realistic rates of assessment for the various fruits regulated.

The experience of the Control Committee in connection with the fiscal aspects of the marketing agreement and order program, during each season, indicates that it is not possible to segregate with precision the overhead from the regulatory expenses applicable to each of the respective fruits. For example, certain expenses, such as rent, salaries, telephone and telegraph, utilities, and some field expenses, are allocable in part to both overhead and regulatory expenses incurred in consideration of proposed regulations by all commodity committees established under the program. Such partial expenses, however, should be aggregated with all the regulatory expenses incurred in connection with each of the fruits separately in order to reflect the actual costs incident to the seasonal operation of the program on an individual fruit basis.

It is manifest, from the operations of the marketing agreement and order program, that the extent of regulation of each of the fruits covered thereunder is not, on a seasonal basis, the same. The evidence adduced at the hearing shows that an unequal degree of regulation as between the respective fruits during any season, and consequently an unbalanced allocation of the facilities of the Control Committee among such fruits, was the rule, rather than the exception. In fact, during some seasons, the handling of some of the fruits has not been regulated. In view of the foregoing, therefore, the value of the services which conceivably may result from general overhead expenses usually will not be commensurate with the volume of shipments of each fruit. The provision for a single rate of assessment for general overhead expenses, therefore, has proved through experience to have resulted at times in an unfair burden upon shipments of certain of the fruits.

Flexibility is afforded, under the present program, with respect to the establishment of the various rates of assessment for regulatory expenses incurred in connection with regulation of the different fruits, since the rates may be fixed on an individual basis for each such fruit. However, since the total pro rata share of expenses which each handler must bear consists of one component (i. e., the rate of assessment for general overhead expenses) which is fixed at the same rate for each fruit, and another component (i. e., the rate of assessment for regulatory expenses) which may vary as between fruits, maximum flexibility in the establishment of such total pro rata share is not achieved.

The Secretary should have the authority to increase, from time to time, any previously established rate of assessment for a particular fruit when necessary to secure adequate funds to cover any later finding by him that the anticipated income, derived from assessments to be paid with respect to such fruit, will not offset the actual expenses to be incurred by the Control Committee. Each such increase in the rate of assessment should be applicable to all assessable fruit handled during the particular season, since each handler's pro rata share of the expenses which the Secretary finds will be incurred for each fruit under the program should be the ratio between the total quantity of such fruit handled by such handler during a given season to the total quantity of such fruit handled by all handlers during the same season.

At the hearing, testimony was offered to the effect that the Secretary should be authorized to reduce any previously established rate of assessment under certain circumstances. For example, in the event changed crop or economic conditions brought about an unexpected increase in the total quantity of a particular fruit handled, the aggregate assessments derivable therefrom may exceed the amount of expenses estimated to be incurred in connection with such fruit. It was asserted, therefore, that the Secretary should be permitted to decrease the previously established rate of assessment. But, the marketing agreement and order provide that the Control Committee shall, at the end of each season, credit each contributing shipper with the excess of the amount paid by such shipper above his pro rata share of the expenses. Consequently, no added provision is needed to assure equitable participation by handlers in sharing the expenses of the program and any credits remaining at the close of the season.

(4) The marketing agreement and order program should be amended to provide for the issuance of exemption certificates when minimum standards of quality and maturity are in effect.

Some of the provisions of the marketing agreement and order authorize the establishment of such minimum standards of quality and maturity as will effectuate such orderly marketing of the fruits covered by this program as will be in the public interest. However, the provisions therein relating to the issuance of exemption certificates may not be utilized during periods when the regulation of shipments of fruit is on the basis of minimum standards of quality and maturity.

Under the marketing agreement and order, a grower is entitled to an exemption certificate when, by reason of conditions beyond his control, he is prevented, because of a grade or size regulation in effect, from shipping a percentage of his crop of a particular fruit equal to a determined percentage of all such fruit permitted to be shipped from his district. These exemption provisions are designed to afford relief to any grower from the imposition of undue inequities which, by reason of conditions beyond his control, may accrue from such regulations.

As provided in the marketing agreement and order, the various commodity committees are authorized to recommend the establishment of minimum standards of quality or maturity, or both, to govern the shipment of fruit, in terms of: (i) Minimum standards of maturity; (ii) freedom of fruit from material waste; (iii) freedom of fruit from material impairment of shipping quality; (iv) freedom of fruit from material impairment of edible quality; (v) freedom of fruit from serious damage to appearance; (vi) minimum size requirements; or (vii) any combination of the foregoing. Evidence adduced at the hearing shows that climatic conditions and excesses or shortages of water, which usually result from weather conditions, exert a material bearing upon the growth of the foregoing fruits. Bartlett pears, early varieties and late varieties of plums, and Elberta peaches are grown in producing areas where damage to the crops may occur as a result of adverse climatic conditions. This is especially true of hail damage which, at times, may be localized and affect the crop of an individual grower or the crops of a few growers in the producing area. Also, lack of adequate rainfall may adversely affect the growth of fruit in producing areas where such fruit is not grown under irrigation. It is possible for the crop of an individual grower to be so affected or damaged, by reason of such conditions, that little or none of such crop could be shipped under regulation by minimum standards of quality and maturity in the absence of exemption provisions. This situation may conclude the operations of such person as a producer. The relief, therefore, which would be afforded such producer by an exemption certificate assumes significant stature.

The aggregate seasonal shipments of a particular fruit under exemption certificates, when minimum standards would be in effect, should not result in any apparent decrement in the average quality, including the size, of all fruit shipped. In this connection, the 1948 season was shown to have been reasonably normal, as far as the quality and size of the fruit of the respective crops were concerned, and may be considered typical of a season during which minimum standards of quality and maturity may be established. During the 1948 season, 2,400 crates of plums covered by exemption certificates were shipped as compared with total shipments of almost 2,900,000 crates of plums under grade and size regulations. At the same time, less than 1,500 packages of Elberta peaches were shipped under exemption certificates as compared with total shipments of more than 3,800,000 packages of Elberta peaches under grade and size regulations. Similarly, the total quantity of fruit that may be permitted to be shipped under exemption certificates when minimum standards are effective would tend toward comparable insignificance; and the shipment of such exempted fruit would not impinge upon the orderly marketing of the crop of such fruit.

The basic principles governing the issuance of exemption certificates when minimum standards are in effect should be the same as those employed under the marketing agreement and order when grade or size regulations are in effect. An exemption certificate should, therefore, be issued to any grower who furnishes the requisite proof to the appropriate commodity committee concerning his eligibility for the exemption certificate. Similarly, as prescribed by the marketing agreement and order, when, because of a general crop failure or any other unusual condition within a particular district or districts, it is not feasible or would not be equitable to issue exemption certificates to growers on the basis of the determined percentage of fruit permitted to be shipped from the respective district, exemption certificates should be issued to growers on the basis of the average of all such percentages for all districts.

Conditions beyond the control of growers are in contrast to conditions resulting from the lack of observance of proper cultural and harvesting practices. Proper cultural care and adequate thinning are necessary to produce fruit meeting minimum standards of quality and maturity. The lack of observance of such practices by growers in the production or harvesting of their fruit should not be considered as a proper basis for the issuance of exemption certificates; and it would not be equitable to allow growers who do not properly cultivate or thin their crops to be permitted to ship, through the means of exemption certificates, as large a proportion of their

crops as those growers who did engage in such cultural practices.

Each commodity committee should maintain adequate records of all applications submitted for exemption certificates and of all certificates issued, including the information used in determining in each instance the quantity of fruit to be so exempted, and a record of all shipments of exempted fruit. Such data should be submitted from time to time to the Secretary in order to assure proper administration of these exemption provisions.

(5) The marketing agreement and order should be amended to provide for a season beginning on March 1 of each year and ending on the last day of February of the following year. The purpose of this amendment is to advance the commencement of each season one month ahead of the beginning of the season as such term is now defined. This should be done because many of the actions by the Control Committee are subject to the requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) and, therefore, may involve a substantial period of time prior to their becoming effective. Furthermore, this change will permit a more orderly functioning of the agency, established to administer the provisions of the marketing agreement and order program, by providing additional time, prior to the first shipments of the respective fruits, for the agency to prepare for a season's operations. Evidence shows that shipments of the fruits subject to regulation generally occur during a marketing period extending from May 10 to November 15, which is within the new definition of the term "season."

Conjunctionally with the foregoing, appropriate changes should be made in the provisions of the marketing agreement and order relating to:

(i) The respective terms of office of members selected to serve on the Control Committee and the commodity committees,

(ii) The dates prior to which nominations for membership on such committees are required to be submitted to the Secretary, and

(iii) The period to be considered for the purpose of conducting biennial referenda

so that the time specifications therein will continue to have the same relationship to the beginning of each season as is now the case.

(6) The provisions of the marketing agreement and order should be amended by deleting the references therein to confidential employees. Experience in administering the program has indicated that all employees of the Control Committee, because of their duties, handle information of a confidential nature concerning the operations of the respective shippers. The manager should receive all reports and other data required to be submitted by shippers. Also, the manager should take such precautions as may be necessary to assure that the employees of the committee do not disclose any of the confidential information contained in such reports and data except as provided in the marketing agreement and order, which set forth explicitly the manner in which such information is to be handled. The activities of the employees of the committee, as is consistent with good business practice, are under the direction of such agency; and the evidence of record reveals that there is no need for continuing the designation of "confidential employees" each season.

(7) Provision should be made for the modification, suspension, or termination by the Secretary of any or all regulations issued pursuant to the marketing agreement and order. This authority should be stated explicitly in order to indicate clearly the plenary power of the Secretary with respect to the regulatory activity. Such action by the Secretary should be authorized to be predicated not only on the basis of a commodity committee's recommendation but also on the basis of such other information as may be available to him. Provision should also be made whereby each commodity committee may recommend to the Secretary the modification, suspension, or termination of any or all regulations pursuant to the program; and such committees should forward to the Secretary, with each such recommendation, all pertinent information. The record shows that, especially in instances where sudden changes occur in growing or marketing conditions so as to warrant an immediate modification of an existing regulation, the committee should promptly apprise the Secretary of its recommendation in that regard. Each modification relaxing a regulation in effect should be made effective promptly in order to permit fruit which meets the requirements of the modified regulation to be shipped as soon as practicable to consuming markets.

General findings. (1) The marketing agreement, as hereby proposed to be amended, and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The marketing agreement, as hereby proposed to be amended, and the order, as hereby proposed to be amended, regulate the handling of Bartlett pears, early plums, late plums, and Elberta peaches grown in the State of California in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity, specified in the marketing agreement upon which hearings have been held;

(3) The marketing agreement, as hereby proposed to be amended, and the order, as hereby proposed to be amended, are limited in their application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of such regional production area would not effectively carry out the declared policy of the act; and

(4) The marketing agreement, as hereby proposed to be amended, and the order, as hereby proposed to be amended, prescribe, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in production and marketing of the fruit covered thereby.

It is hereby found and proclaimed that: (1) The purchasing power of early varieties of plums and late varieties of plums, respectively, grown in the State of California, cannot be satisfactorily determined from available statistics of the Department of Agriculture with respect to the period August 1909–July 1914; (2) the purchasing power of such fruit can be satisfactorily determined from available statistics of the Department of Agriculture with respect to the period January 1, 1920, to December 31, 1928, both dates inclusive; and (3) the period January 1, 1920, to December 31, 1928, both dates inclusive, is the base period for determining the purchasing power of such fruit.

Amendments to the marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Agreement Amending the Marketing Agreement, as amended, Regulating the Handling of Fresh Bartlett Pears, Plums, and Elberta Peaches Grown in the State of California" and "Order Amending the Order, as amended, Regulating the Handling of Fresh Bartlett Pears, Plums, and Elberta Peaches Grown in the State of California" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision except the annexed agreement amending the marketing agreement be published in the FEDERAL REGISTER. The regulatory provisions of the said agreement amending the marketing agreement are identical with those contained in the said amendatory order which will be published with this decision.

This decision filed at Washington, D. C., this 18th day of March 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order[1] Amending the Order, as Amended, Regulating the Handling of Fresh Bartlett Pears, Plums, and Elberta Peaches Grown in the State of California

§ 936.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceeding to formulate marketing agreements and marketing orders have been met.

(a) *Findings on the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. and Sup. I 601 et seq.) and the rules of practice and procedure effective thereunder (7 CFR and Supps. 900.1 et seq.; 13 F. R. 8585), a public hearing was held at Sacramento, California, beginning on December 6, 1948, upon proposed further amendments to the marketing agreement and Order No. 36 (7 CFR, Cum. Supp., Part 936) regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of Bartlett pears, early varieties of plums, late varieties of plums, and Elberta peaches grown in the State of California in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity, specified in the marketing agreement upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of such regional production area would not effectively carry out the declared policy of the act; and

(4) The said order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in production and marketing of the fruit covered thereby.

It is hereby found and proclaimed that: (1) The purchasing power of early varieties of plums and late varieties of plums, respectively, grown in the State of California, cannot be satisfactorily determined from available statistics of the Department of Agriculture with respect to the period August 1909–July 1914; (2) the purchasing power of such fruit can be satisfactorily determined from available statistics of the Department of Agriculture with respect to the period January 1, 1920, to December 31, 1928, both dates inclusive; and (3) the period January 1, 1920, to December 31, 1928, both dates inclusive, is the base period for determining the purchasing power of such fruit.

It is therefore ordered, That, on and after the effective date hereof, the handling of fresh Bartlett pears, early varieties of plums, late varieties of plums, and Elberta peaches grown in the State of California shall be in conformity to, and in compliance with, the terms and conditions of said order, as amended and as hereby further amended; and such order is hereby amended as follows:

1. Delete the provisions of § 936.1 (d) and insert in lieu thereof, the following:

(d) "Fruit" means any one or more of the following types of deciduous fruit and designated varietal groupings of plums grown in the State of California and shipped in fresh form: (1) Bartlett pears; (2) Elberta peaches; (3) early varieties of plums, consisting of plums of the Beauty, Formosa, Santa Rosa, and Climax varieties; and (4) late varieties of plums, consisting of plums of all varieties other than those listed in subparagraph (3) of this paragraph.

2. In § 936.1 (h) delete the dates "April 1" and "March 31" and insert, in lieu thereof, "March 1" and "the last day of February", respectively.

3. Delete § 936.1 (j) and redesignate § 936.1 (k) and § 936.1 (l) as § 936.1 (j) and § 936.1 (k), respectively.

4. In the second sentence of § 936.2 (a) delete the date "March 1" and insert, in lieu thereof, "February 1".

5. In the second sentence of § 936.2 (e) delete the date "February 15" and insert, in lieu thereof, "January 15".

6. In § 936.2 (k) delete the dates "March 15" and "April 1" and insert, in lieu thereof, "February 15" and "March 1", respectively.

7. Revise § 936.2 (s) (4) to read as follows:

(4) To employ a manager who shall, among other duties, act as the secretary of the Control Committee, all commodity committees, and the Sales Managers' Committee established pursuant hereto; to employ such other employees as it deems necessary; to determine the salary and duties of such manager and other employees; and to authorize, if the committee deems such to be necessary, the manager to employ temporarily, subject to such limitations and qualifications as may be specified by the committee, such persons as the manager deems necessary, and to determine the salaries of such persons, which salaries shall be reasonable and within the limitations of the budget and such other limitations as may be prescribed by the committee, and to define the respective duties of such persons;

8. Delete the following words which appear in the first sentence of § 936.4 (c) (2): "In paragraph (a)".

9. Delete § 936.4 (e); redesignate § 936.6 to read "§ 936.6a"; and add the following as a new § 936.6:

§ 936.6 *Modification, suspension, or termination.* Whenever a commodity committee, established hereunder for a particular fruit, deems it advisable to modify, suspend, or terminate any or all of the regulations issued pursuant hereto for such fruit or any variety or varieties thereof, it shall so recommend to the Secretary. With each such recommendation submitted to the Secretary, the commodity committee shall forward the information upon which it acted in making such recommendation. If the Secretary finds, upon the basis of such recommendation and information or from other available information, that to modify such regulations will tend to effectuate the declared policy of the act, he shall so modify such regulations. If the Secretary finds, upon the basis of such recommendation and information or upon the basis of other available information, that any such regulations obstruct or do not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulations. The Secretary shall immediately notify such commodity committee, and such committee shall promptly give adequate notice to handlers and growers, of the issuance of each order modifying, suspending, or terminating any such regulations. In like manner and upon the same basis the Secretary may terminate any such modification or suspension.

10. Revise § 936.5 to read as follows:

§ 936.5 *Regulation of daily shipments*—(a) *Definitions.* As used in this section, the following terms shall have the following meanings:

(1) "Railroad assembly point" means any railroad shipping point designated by the Bartlett Pear Commodity Committee.

(2) "Cold storage assembly point" means any cold storage plant in the State of California.

(3) "Shipping point" means any point, in the State of California, from which fruit is shipped by railroad or truck.

(4) "Arrive" or "arrival" means (i) the actual time of arrival of a car of fruit at a railroad assembly point, if such car is not pre-cooled at such assembly point, (ii) the actual time when pre-cooling is completed if the car of fruit is pre-cooled at railroad assembly point, or (iii) such time subsequent to the actual delivery of a car of fruit, or the equivalent thereof, at a cold storage assembly point as the commodity committee may prescribe by rules and regulations.

(5) "Cold storage" means retention of fruit under refrigeration in a storage warehouse for such period of time, at such place, and under such conditions as the commodity committee may prescribe by rules and regulations.

(6) "Available" means (i) when used with reference to the fruit of a shipper whose fruit is being regulated at assembly point, the quantity of fruit controlled by him arriving, on a particular day, at any or all assembly points such day, (ii) when used with reference to the fruit of a shipper whose fruit is being regulated at shipping point, the quantity of fruit which he controls packed by or for him for interstate shipment and foreign shipment on the Continent of North America on such particular day at such shipping point.

(7) "Total available" means the quantity of fruit available for shipment on a particular day by all shippers whose shipments are regulated at shipping points plus the quantity of fruit, arriving on such particular day at all assembly points, controlled by all shippers electing regulation at assembly points.

(8) "Fruit controlled" means fruit to which the shipper has legal title or fruit which the shipper has been authorized by the owner to ship.

(9) "Ship" and "market" are synonymous and mean to convey in, or handle for shipment in, to ship or cause to be conveyed or handled for shipment in, or in any other way to put fruit in, the

channels of trade by conveying or causing fruit to be conveyed by railroad, truck, boat, or any other means whatsoever (except as a common carrier of fruit owned by another person), in the current of interstate or foreign commerce on the Continent of North America, or so as directly to burden, obstruct, or affect such commerce.

(10) "Shipper" and "handler" are synonymous and mean any person who ships, or is engaged in shipping, marketing, consigning, or dealing in fruit, either in person or as or through an agent, broker, representative, or otherwise, in the current of interstate or foreign commerce on the Continent of North America, or so as directly to burden, obstruct, or affect such commerce.

(11) "Fruit" means Bartlett pears grown in the State of California and shipped in fresh form.

(12) "Car of fruit" or "carload of fruit" means such quantity of fruit as may be specified in the rules and regulations adopted by the commodity committee.

(13) "Commodity committee" or "committee" means the Bartlett Pear Commodity Committee.

(b) *Recommendation of regulation.* The commodity committee may, during the effective time of a regulation established pursuant to § 936.4 (a) hereof, recommend, from time to time, to the Secretary the establishment of a period of time during which the daily shipments of fruit will be regulated. Such recommendation shall specify the period of time for regulation and the advisable daily shipments of fruit during such period; and the Secretary shall be furnished with the information upon which each such recommendation is predicated.

(c) *Establishment of regulation.* If the Secretary shall find, upon the basis of such information and recommendation pursuant to the provisions of paragraph (b) of this section, or upon other information available to the Secretary, that the limitation of daily shipments, as provided in this section, during a regulation period will tend to effectuate the declared policy of the act, he shall establish a regulation period and determine the total advisable quantity of fruit to be shipped daily to all markets, outside of the State of California and on the Continent of North America, during such period; and the Secretary shall promptly notify the commodity committee of the establishment of the regulation period. The commodity committee shall give such notice of the establishment of the regulation period as may be reasonably calculated to bring such regulation to the attention of all interested persons. A shipper who has made no shipment from a particular shipping point during the particular season, and who elects regulation at shipping point as provided in this section, may apply to the committee for exemption from regulations pursuant to this paragraph of this section. The commodity committee shall, if it finds that the shipper who has made such application would otherwise be unable to begin operations at said shipping point, exempt such shipper from such regulation pursuant to this paragraph of this section for a period not to exceed seventy-two (72) consecutive hours following the packing of the first fruit by such shipper at such shipping point.

(d) *Election of type of regulation by shipper.* Each shipper desiring to ship fruit, during a regulation period, shall promptly elect whether such fruit shall be regulated at railroad assembly points, cold storage assembly points, or shipping point; and each shipper shall promptly advise the commodity committee with regard to the choice thus made by the respective shipper. The fruit of any shipper who fails to make such election shall be regulated at railroad assembly points and cold storage assembly points. Except as provided herein, any shipper electing regulation at assembly points, for fruit from any particular shipping point, shall not be eligible to elect regulation at any such shipping point until all of such fruit at assembly points has been released. Each shipper whose fruit is regulated at railroad assembly points shall file with the carrier an order directing it to stop each carload of the respective shipper's fruit at such assembly points until the release of such fruit has been ordered by the commodity committee.

(e) *Reports by shippers.* Each shipper whose fruit is regulated at cold storage assembly points shall report or authorize the cold storage companies to report to the commodity committee the time when each carload, or the equivalent quantity thereof, of such fruit controlled by him entered a cold storage assembly point. Each shipper shall furnish or authorize the cold storage companies to furnish to the commodity committee the time of entrance into cold storage of each carload, or the equivalent thereof, of such fruit controlled by him.

(f) *Allotment percentage.* The allotment percentage for fruit for a particular day, during a regulation period established pursuant to the provisions of this section, shall be the percentage obtained by dividing the total advisable quantity of such fruit to be shipped that day, determined by the Secretary pursuant to the provisions of paragraph (c) of this section, by the total available of such fruit on the second day prior to such particular day, as computed by the commodity committee pursuant to the provisions of this section. In no case shall the allotment percentage exceed one hundred (100) percent. The allotment percentage shall be calculated by the commodity committee: *Provided,* That in the event the allotment percentage for a particular day cannot be calculated, pursuant to the foregoing provisions of this paragraph, the allotment percentage on the first previous day on which an allotment percentage can be calculated, pursuant to the provisions of this paragraph, shall be used in calculating allotments for such particular day.

(g) *Determination of allotments at shipping point.* The allotment of fruit, for a particular day, for any shipper who has elected to have his shipments regulated at shipping point, shall be the result obtained by applying the allotment percentage for such day, calculated as provided in this section, to such shipper's component part of the available used in determining the allotment percentage. No shipper whose fruit is regulated at shipping point shall ship from shipping point fruit in excess of his allotments: *Provided, however,* That the shipment of less than one (1) carload in excess of a shipper's allotment shall not be a violation of the provisions hereof if such shipper advises the commodity committee, with regard to such overshipment, by not later than the end of the day following the day on which such overshipment was made. The quantity of fruit shipped in excess of the allotment, as permitted pursuant to the provisions of this paragraph, shall be offset by a reduction of an equal amount from the respective shipper's allotment for the next succeeding day on which such shipper ships, or, if such allotment is less than the overshipment, then such excess shipment shall be deducted from succeeding allotments until such excess shipment has been entirely offset. If any shipper ships less than his allotment for a particular day, such shipper may ship, only during the next day in which such shipper is entitled to an allotment, a quantity equal to such undershipment in addition to his allotment: *Provided,* That such undershipment is promptly reported to the commodity committee. The committee shall determine, pursuant to the provisions hereof, each shipper's allotment, and advise each shipper relative to his allotment. Except as provided in this paragraph and in paragraph (c) of this section, and in § 936.7 hereof, no shipper shall ship fruit in excess of his allotment. The commodity committee may, at such time and in such manner as it may prescribe in rules and regulations, require any shipper to account to it for the disposition of the quantity of fruit in excess of the respective shipper's allotment. Fruit shipped pursuant to allotments at shipping points shall not be detained at assembly points. Each day on which any shipper who has elected to have his shipments regulated at shipping point shall fail to pack for shipment and ship fruit under the terms of this paragraph shall, with respect to such shipper, be excluded from all calculations under this paragraph or under paragraph (f) of this section.

(h) *Shipments from assembly points.* The quantity of fruit which may be shipped, on any day during a regulation period, except the first two days thereof, from all assembly points by shippers who have not elected to have their fruit regulated at shipping points shall be the total advisable quantity to be shipped that day, determined by the Secretary pursuant to the provisions of paragraph (c) of this section, less (1) the quantity of fruit shipped pursuant to paragraph (g) of this section by shippers electing regulation at shipping points and arriving at railroad assembly points in time to depart that day, and (2) the quantity of fruit which was shipped by boat, to destinations on the Continent of North America, by all shippers on such prior day as the commodity committee may prescribe in rules and regulations approved by the Secretary: *Provided,* That if the quantity of fruit that is actually shipped on a particular day is in excess of or less than the quantity advisable for shipment on the respective day then, in

such event, the quantity shipped on the following day shall be increased or decreased respectively by the amount of such excess shipment or undershipment: *Provided, further,* That the quantity of fruit which may be shipped on each of the first and second days of the initial regulation period, or any other regulation period which does not immediately follow a previous regulation period, from all assembly points by shippers who have not elected to have their fruit regulated at shipping points shall be that quantity which is the result of the application of the percentage, obtained by dividing the total quantity of fruit shipped by such shippers during the second day prior thereto by the quantity shipped by all shippers during such prior day, to the quantity advisable to be shipped on the first and second days, respectively, of the regulation period. The first carload of fruit arriving at any assembly point and subject to regulation thereat shall be the first carload released for shipment from all assembly points on any particular day, and succeeding carloads shall be released for shipment in the order of arrival until the total quantity for the particular day has been released. The maximum time that cars may be held in assembly points shall be prescribed by the commodity committee in rules and regulations approved by the Secretary: *Provided,* That no car shall be held at any assembly point longer than four (4) days whenever there are any cars being regulated at railroad assembly points: *Provided, further,* That fruit shipped pursuant to allotments at shipping points shall not be detained at assembly points. Whenever any shipper has one or more carloads of fruit at an assembly point or points which have priority of shipment at a given time, and such shipper also has other carloads which do not have priority, such shipper may substitute any carload without priority for any carload having such priority. The commodity committee shall, in accordance with the provisions hereof, release fruit, subject to regulation at assembly points, for shipment from assembly points; and fruit, subject to regulation at assembly points, shall not be shipped from any railroad assembly point or cold storage assembly point until it has been released by the commodity committee.

(i) *Adjustment for shipments by boat.* If a shipper whose fruit is regulated at assembly point ships by boat a quantity of fruit to a destination on the Continent of North America, the commodity committee shall, on such day or days prior to the expected arrival of the boat at its destination as may be specified in the rules and regulations adopted by the committee and approved by the Secretary, adjust the priority of time of release of carloads then in assembly points so that no carload of such shipper's fruit then in assembly points shall be shipped until a quantity of fruit entering assembly points subsequently to the aforesaid carload, equal to the quantity of fruit contained in said shipment by boat, has been permitted to be shipped.

(j) *Prohibition of loading.* The Secretary may, in order to effectuate the declared policy of the act, prohibit for a period of forty-eight (48) hours, upon the recommendation of the commodity committee supported by the specific information upon which such recommendation is based, or upon the basis of other information available to the Secretary, the loading of fruit for shipment to any or all railroad assembly points: *Provided,* That there shall elapse not less than ninety-six (96) hours between the last day of one prohibition period, established pursuant to the provisions of this section, and the first day of the next succeeding prohibition period. Any quantity of fruit loaded for shipment to any cold storage assembly point, during a prohibition period, shall not be eligible for release for shipment, except as provided in paragraph (k) of this section, during such time as said fruit is being regulated pursuant to the provisions of this section. No shipper who shipped fruit to any or all assembly points during the forty-eight (48) hours prior to the beginning of a prohibition period, established pursuant to the provisions of this paragraph, shall, for a period of forty-eight (48) hours, succeeding the termination of the respective prohibition period, load for shipment fruit to assembly points in excess of the quantity of such fruit loaded for shipment by the respective shipper during the period of forty-eight (48) hours immediately prior to the beginning of such prohibition period: *Provided,* That any shipper who has made no shipments from a particular district, during the particular season, before the beginning of a prohibition period, established pursuant to the provisions of this paragraph, may apply to the commodity committee for exemption from such restrictions applicable after the termination of such prohibition period, and, if said committee determines that said restrictions operate inequitably to said shipper in a particular district, said committee shall exempt such shipper from such restrictions, after a prohibition period, as are provided in this paragraph.

(k) *Shipment of storage fruit.* Fruit in cold storage shall not be shipped on any particular day during a regulation period, established pursuant to the provisions of this section, unless the quantity of fruit regulated at shipping points and arriving at railroad assembly points in time to depart during the particular day plus the quantity of the fruit eligible for release at assembly points during said particular day is less than the total advisable quantity of the fruit for shipment on said day. When the aforesaid conditions exist, such fruit may be released from cold storage for shipment, during a regulation period, in the same sequence as that in which such fruit has been placed in storage: *Provided,* That such releases for shipment from cold storage on any day shall be limited to the amount of the fruit advisable to be shipped, pursuant to the provisions of this section, less the quantity of the fruit regulated at shipping points and arriving at railroad assembly points in time to depart during the particular day and the quantity of the fruit eligible for release at assembly points on said particular day: *Provided further,* That any quantity of fruit in cold storage may be substituted for the same quantity of fruit eligible to be shipped pursuant to regulation at shipping points or assembly points.

(l) *Revision and correction of reports.* The commodity committee may investigate and check the accuracy of any reports filed pursuant to the provisions of this section, and said committee may verify the same in such manner as it may determine; and, on the basis of the findings by said committee, it may revise and correct any such report. The commodity committee shall prescribe reasonable means whereby any grower or shipper, who may be dissatisfied with the action taken by said committee, may protest to that committee, or its representative, concerning the action taken by said committee; and in the event of such protest, the action taken by the committee shall be reconsidered and revised to any such extent as the committee may find to be proper. Thereafter, such person protesting, if dissatisfied, may appeal to the Secretary from the committee's final decision on said protest; and the Secretary's determination on such appeal shall be conclusive and final.

(m) *Exceptions.* Cars containing two hundred (200) standard packages (as specified in the Agricultural Code of California) or less, or the equivalent thereof in weight, of fruit covered by a regulation pursuant to the provisions of this section shall be exempt from such regulations: *Provided,* That, such exempted fruit shall be grown in the district from which it is shipped or shipped from a district in which no such fruit is being harvested during the period of such regulation.

11. Delete the first four sentences in § 936.8 (b) and insert, in lieu thereof, the following: "Each shipper of a particular fruit shall, upon demand, pay to the Control Committee such shipper's pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, during the current season with respect to such fruit. Each such shipper's share of such expenses shall be that proportion thereof which the total quantity of such fruit shipped by such shipper during said season is of the total quantity of the same fruit shipped by all shippers during the same season. The Secretary shall fix the rate of assessment which shippers of such fruit shall pay. The Secretary may, from time to time, increase such rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred during said season for such fruit; and such increase shall be applicable to all such fruit shipped during the season."

12. In the first sentence of § 936.9 (c) delete the words "confidential employee or confidential employees" and insert, in lieu thereof, the word "manager."

13. Delete the last two sentences in § 936.9 (c) and insert, in lieu thereof, the following: "Upon receipt of the foregoing by the manager of the Control Committee, he shall promptly have such information compiled; and a summary of such compiled information shall be made available promptly to all shippers and other interested parties. Each such summary, however, shall not reveal the identity of any informant. The man-

ager and each person engaged in the preparation of any such compilation or summary, shall not disclose any information obtained pursuant to this paragraph except in the aforesaid summary: *Provided,* That the manager and each person engaged, as aforesaid, shall, if so directed by the Secretary, submit all of said information, including the original reports, to the Secretary or such other person or persons as the Secretary may direct."

14. In the last sentence of § 936.10 (b) (2) delete the dates "April 1" and "March 31" and insert, in lieu thereof, "March 1" and "the last day of February", respectively.

[F. R. Doc. 49-2179; Filed, Mar. 22, 1949; 8:59 a. m.]

[7 CFR, Part 936]

Fresh Bartlett Pears, Plums, and Elberta Peaches Grown in California

Order Directing That Referendum Be Conducted; Designation of Agents to Conduct Referendum; Determination of Representative Period

Pursant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. and Sup. 601 et seq.), it is hereby directed that a referendum be conducted among the producers who, during the period March 1, 1948, to February 28, 1949, both dates inclusive (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the State of California, in the production of Bartlett pears, plums, and Elberta peaches for shipment in fresh form, to determine whether such producers favor the issuance of an order amending Order No. 36, as amended (7 CFR Cum. Supp., Part 936; 13 F. R. 9488), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, a copy of which is annexed to the decision of the Secretary of Agriculture filed simultaneously herewith.[1] R. M. Walker, J. H. Bryce, D. M. Rubel, and R. C. Beeman of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, are hereby designated agents of the Secretary of Agriculture, to perform, jointly or severally, the following functions in connection with the referendum:

(a) Conduct the referendum in the manner herein prescribed:

(1) By giving opportunity to each of the aforesaid producers to cast his ballot in the manner herein authorized, relative to the aforesaid order, on a copy of an appropriate ballot form. A cooperative association of such producers, bona fide engaged in marketing fresh Bartlett pears, plums, and Elberta peaches grown in California or in rendering services for or advancing the interests of the producers of such fruit, may vote for the producers who are members of, stockholders in, or under contract with, such cooperative association (such vote to be cast on a copy of the appropriate ballot form), and the vote of such cooperative association shall be considered as the vote of such producers.

(2) By giving public notice, as prescribed in (a) (3) hereof, (i) of the time during which the referendum will be conducted; (ii) that any ballots may be cast by mail; (iii) that all ballots so cast must be addressed to J. H. Bryce, Field Representative, Western Marketing Field Office, 100 Plaza Building, 921 Tenth Street, Sacramento 14, California; and (iv) of the time prior to which such ballots must be postmarked.

(3) By giving public notice (i) by utilizing available agencies of public information (without advertising expense), including both press and radio facilities in California; (ii) by mailing a notice thereof (including a copy of the appropriate ballot form) to each such cooperative association and to each producer whose name and address is known; and (iii) by such other means as said referendum agents or any of them may deem advisable.

(4) By conducting meetings of producers and arranging for balloting at the meeting places, if said referendum agents or any of them determines that voting may be conducted at meetings. At each such meeting, balloting shall continue until all of the producers who are present, and who desire to do so, have had an opportunity to vote.

(5) By giving ballots to producers at each such meeting, and receiving any ballots when they are cast.

(6) By securing the name and address of each person casting a ballot, and inquiring into the eligibility of such person to vote in the referendum.

(7) By giving public notice of the time and place of each meeting authorized hereunder by posting a notice thereof, at least two days in advance of each such meeting place, and in two or more public places within the applicable area; and, so far as may be practicable, by giving additional notice in the manner prescribed in paragraph (a) (3) hereof.

(8) By forwarding to J. H. Bryce, 100 Plaza Building, 921 Tenth Street, Sacramento 14, California, immediately after the close of the referendum, the following:

(i) A register containing the name and address of each producer and each cooperative association of producers to whom a ballot form was furnished;

(ii) A register containing the name and address of each producer and each cooperative association of producers from whom an executed ballot was received;

(iii) All of the ballots received by the respective referendum agent in connection with the referendum, together with a certificate to the the effect that the ballots forwarded are all of the ballots cast and which were received by the respective agent during the referendum period;

(iv) A statement showing when and where each notice of referendum posted by said agent was posted and, if the notice was mailed to producers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and

(v) A detailed statement reciting the method used in giving publicity to such referendum.

(9) By appointing any farm adviser in charge of any county agricultural extension office, and by authorizing the chairman of the State Production and Marketing Administration committee to appoint any member or members of a county Agricultural Conservation Association committee, located in California, and by appointing any other persons deemed necessary or desirable, to assist said referendum agents in performing their duties hereunder. Each such person so appointed shall serve without compensation, and may be authorized by the said referendum agents or any of them to perform any or all of the functions set forth in paragraphs (a) (5), (6), (7), and (8) hereof (which, in the absence of such appointment of subagents, shall be performed by said referendum agents) in accordance with the requirements herein set forth.

(b) Upon receipt by J. H. Bryce of all ballots cast in accordance with the provisions hereof, and such other information and data as may be required pursuant hereto, he shall forward the ballots, together with the information and data, to the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C. The Fruit and Vegetable Branch shall canvass the ballots and prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results.

(c) Each referendum agent and appointee pursuant hereto shall not refuse to accept a ballot submitted or cast; but should they or any of them deem that a ballot should be challenged for any reason, or if such ballot is challenged by any other person, said agent or appointee shall endorse above his signature, on the back of said ballot, a statement that such ballot was challenged, by whom challenged, and the reason therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

(d) All ballots shall be treated as confidential.

The Director of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the said referendum agents and appointees in conducting said referendum.

Copies of the aforesaid amendments to the order may be examined at the Office of the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., or obtained from the Western Marketing Field Office of the Fruit and Vegetable Branch, Production and Marketing Administration, at 100 Plaza Building, 921 Tenth Street, Sacramento 14, California.

[1] See F. R. Doc. 49-2179, *supra.*

Ballots to be cast in the referendum may be obtained from any referendum agent, and any appointee hereunder.

Done at Washington, D. C., this 18th day of March 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-2181; Filed, Mar. 22, 1949; 8:59 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR, Part 130]

FLATHEAD INDIAN IRRIGATION PROJECT, MONTANA

PROPOSED ORDER FIXING OPERATION AND MAINTENANCE CHARGES

MARCH 14, 1949.

Pursuant to section 4 (a) of the Administrative Procedure Act of June 11, 1946 (Pub. Law 404—79th Cong., 60 Stat. 238) and authority contained in acts of Congress approved August 1, 1914; May 18, 1916; March 7, 1928 (38 Stat. 583, 25 U. S. C. 385; 39 Stat. 1942; and 45 Stat. 210, 25 U. S. C. 387) and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs September 11, 1946 (11 F. R. 10279) and by virtue of authority delegated by the Commissioner of Indian Affairs to the District Director September 14, 1946, notice is hereby given of intention to modify §§ 130.24, 130.26 and 130.28 of Title 25, Code of Federal Regulations, dealing with irrigable lands of the Flathead Indian Irrigation Project that are subject to the jurisdiction of the several Irrigation Districts.

Charges applicable to all irrigable lands in the Flathead Indian Irrigation Project that are included in the Irrigation District Organizations and are subject to the jurisdiction of the three Irrigation Districts.

§ 130.24 *Charges.* Pursuant to a contract executed by the Flathead Irrigation District, Flathead Indian Irrigation Project, Montana, on May 12, 1928, as supplemented by later contracts dated February 27, 1929, March 28, 1934, and August 26, 1936, notice is hereby given of intention to fix an assessment of $138,200 for the season of 1950 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines of and under the jurisdiction of the Flathead Irrigation District. This assessment involves an area of approximately 67,595.8 acres; does not include any land held in trust for Indians, and covers all proper general charges and project overhead.

§ 130.26 *Charges.* Pursuant to a contract executed by the Mission Irrigation District, Flathead Indian Irrigation Project, Montana, on March 7, 1931, approved by the Secretary of the Interior on April 21, 1931, as supplemented by later contracts dated June 2, 1934 and August 26, 1936, notice is hereby given of intention to fix an assessment of $24,300 for the season of 1950 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines of, and under the jurisdiction of, the Mission Irrigation District. This assessment involves an area of approximately 12,357.0 acres; does not include any land held in trust for Indians, and covers all proper general charges and project overhead.

§ 130.28 *Charges.* Pursuant to a contract executed by the Jocko Valley Irrigation District, Flathead Indian Irrigation Project, Montana, on November 13, 1934, approved by the Secretary of the Interior on February 26, 1935, as supplemented by a later contract dated August 26, 1936, notice is hereby given of intention to fix an assessment of $13,000 for the season of 1950 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines of, and under the jurisdiction of, the Jocko Valley Irrigation District. This assessment involves an area of approximately 5,579.4 acres; does not include any land held in trust for Indians, and covers all proper general charges and project overhead.

The foregoing proposed amendments are to become effective for the irrigation season of 1950 and continue in effect thereafter until further notice.

Interested persons are hereby given opportunity to participate in preparing the proposed amendments by submitting their views and data or argument in writing to Paul L. Fickinger, Regional Director, U. S. Indian Service, 804 North 29th Street, Billings, Montana, within 30 days from the date of the publication of this notice of intention in the daily issue of the FEDERAL REGISTER.

PAUL L. FICKINGER,
Regional Director.

[F. R. Doc. 49-2117; Filed, Mar. 22, 1949; 8:45 a. m.]

DEPARTMENT OF THE TREASURY

Bureau of Internal Revenue

[26 CFR, Part 184]

PRODUCTION OF BRANDY

NOTICE OF PROPOSED RULE-MAKING

A notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto, which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Washington 25, D. C., within the period of 30 days from the date of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority of sections 3036 and 3176, Internal Revenue Code (26 U. S. C., 3036 and 3176).

[SEAL] GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

1. Sections 184.242 and 184.245 of Regulations 5 (26 CFR, Part 184), approved February 28, 1940, are amended as hereinafter provided.

2. The purpose of these amendments is to simplify the procedure relating to the addition of burnt sugar or caramel to brandy at fruit distilleries and internal revenue bonded warehouses.

§ 184.242 *Sweetening properties.* The burnt sugar or caramel added to brandy shall not contain any substantial quantity of sugar which has not been caramelized, or possess any material sweetening properties. (Secs. 3036, 3176, I. R. C.)

§ 184.245 *Addition to packages in warehouse.* Burnt sugar or caramel may be added to packages of brandy in warehouse only where the brandy is unmerchantable by reason of being deficient in color and it is shown that the failure to properly color the brandy prior to the filling of the packages was due to no negligence or fault of the distiller. In such cases, application must be filed with the district supervisor by the distiller or warehouseman, showing the serial numbers of the barrels, the name of the producing distiller, and the necessity for the addition of the burnt sugar or caramel to the brandy. The district supervisor may permit the addition, under the immediate supervision of the storekeeper-gauger, of burnt sugar or caramel, conforming with § 184.242, to each of the barrels, after the brandy has been regauged for tax-payment and prior to the purchase and affixing of the tax-paid stamps to the barrels. (Secs. 3036 and 3176, I. R. C.)

3. This Treasury decision shall be effective on the 31st day following the date of its publication in the FEDERAL REGISTER.

4. This Treasury decision is issued under the authority contained in sections 3036 and 3176, Internal Revenue Code (26 U. S. C., 3036 and 3176).

[F. R. Doc. 49-2178; Filed, Mar. 22, 1949; 8:58 a. m.]

NOTICES

NATIONAL MILITARY ESTABLISHMENT

Department of the Army

MILITARY GOVERNMENT FOR GERMANY (U. S.)

EXPORT-IMPORT INFORMATION

Instructions and Memoranda controlling exports from Germany and imports into Germany, published in 14 F. R. 244, January 18, 1949, amended in 14 F. R. 660, February 15, 1949, and 14 F. R. 1066, March 9, 1949, are further amended by the addition of Amendment "A", JEIA Instruction No. 1 [Revision No. 1], and Regulation No. 1, JEIA Instruction No. 1 [Revision No. 1], as follows:

JEIA INSTRUCTION NO. 1

[Revision No. 1, Amdt. "A"]

(Effective Date February 8, 1949)

SUBJECT: EXPORT PROCEDURE

Paragraph 10 of JEIA Instruction No. 1, Revision No. 1, is hereby amended to read as follows:

10. Prior approval of export contracts by JEIA or VfW will be required only for exports within the following categories:

(a) (i) The export of commodities, the manufacture or handling of which is prohibited or otherwise controlled by Allied Control Authority, Control Council Law No. 43, or any other Military Government regulation, and commodities listed in Appendix B must have the prior approval of Main Office JEIA. (Advice regarding the commodities whose export is prohibited by Military Government regulations will be obtained from JEIA Branch Offices.)

(ii) All contracts covering exports to countries other than (one) member countries of the Organization for European Economic Cooperation (OEEC) and their monetary areas listed as follows: Austria, Belgium, Italy, Luxembourg, Norway, the Netherlands, Denmark, France, Greece, Ireland, Iceland, Portugal, the United Kingdom, Sweden, Switzerland, Turkey, and the British/United States Zone of the free Territory of Trieste; (two) all countries of the Sterling area; and (three) the United States, Canada and Newfoundland, must have the prior approval of Main Office JEIA.

(b) Export of commodities listed in Appendix C must have the prior approval of VfW or competent German authority designated by VfW.

(c) All processing contracts must be submitted to VfW or competent German authority designated by VfW for approval, except cases involving payment in kind or partially in cash and partially in kind which will be submitted to JEIA Main Office after VfW approval.

(d) All contracts which contain provisions restricting the sale or distribution of German goods, commodities, and services abroad (see para 7 (a) above), shall be subject to provisions of JEIA Operational Memorandum No. 31, dated 15 September 1948, and shall be submitted to the appropriate JEIA Branch Office for approval before any export is made thereunder or before any ECD is submitted to the Aussenhandelsbank.

The transmittal of contracts to Main Office JEIA or VfW for approval, the issue of the required Certificate of Approval and the submission of the Certificate of Approval to an Aussenhandelsbank before any ECD is approved and issued by the Aussenhandelsbank shall be in accordance with Regulation No. 1 to be issued under this instruction.

Date of issue: February 9, 1949.

JEIA INSTRUCTION NO. 1

[Revision No. 1, Reg. No. 1]

(Effective Date February 10, 1949)

SUBJECT: CERTIFICATES OF APPROVAL FOR EXPORTS

OBJECT

1. To prescribe a procedure whereby approval may be obtained from JEIA or VfW for the export of commodities whose export is restricted by paragraph 10 (a) and (b) of JEIA Instruction No. 1, Revision No. 1.

CERTIFICATE OF APPROVAL FOR EXPORT

2. Exports falling within the categories of paragraph 10 (a) and (b) aforementioned shall be exported only after the issuance of a Certificate of Approval. Certificates of Approval shall be uniform and in form as at Annex A hereto.

3. A Certificate of Approval may be issued only in connection with a firm export contract commitment; it shall cover the commodity or commodities specified in the contract, for sale only to the purchaser named in the contract; and, it shall be valid only for the duration of the contract. An exporter may apply for a Certificate of Approval immediately upon the making of an export contract commitment.

EXPORTS REQUIRING JEIA APPROVAL

4. Commodities and contracts referred to in paragraph 10 (a) of JEIA Instruction No. 1, First Revision, shall be approved only pursuant to the following procedure:

The exporter shall apply for the Certificate of Approval by submitting direct to Main Office, JEIA, Export Branch, Frankfurt a/Main, the filled out forms of the Certificate of Approval in triplicate, accompanied by a signed copy of his export contract or other record of the contract commitment. Upon approval, the Main Office will sign the Certificate of Approval in triplicate, forward the original and one copy thereof to the exporter and retain one copy, together with the copy of the contract, for its files. Each signed Certificate of Approval shall be dated and assigned a serial number starting with JEIA/CA/0001. JEIA will note on the Certificate of Approval in the appropriate space "VfW Approval not required".

EXPORTS REQUIRING BOTH JEIA AND VfW APPROVAL

5. Commodities and contracts to which provisions of both paragraphs 10 (a) and (b) of JEIA Instruction No. 1, First Revision, apply, shall be approved only pursuant to the following procedure:

The exporter will follow the procedure and JEIA will act thereon as set forth in paragraph 4 above, except that the signed Certificates of Approval, together with the contracts, will be transmitted to the VfW for approval or disapproval. Upon approval, the VfW will sign the certificate and forward the original and one copy to the exporter, retaining one copy and the copy of the contract for its files. Where the Certificate of Approval has been assigned a JEIA CA number, VfW will not number the certificate.

EXPORTS REQUIRING VfW APPROVAL

6. Commodities referred to in paragraph 10 (b) of JEIA Instruction No. 1, First Revision, shall be approved only pursuant to the following procedure:

The exporter shall apply for the Certificate of Approval by submitting to the VfW the filled out forms of the Certificate of Approval in triplicate accompanied by a signed copy of his export contract or other record of the contract commitment. The VfW shall have the responsibility of issuing a Certificate of Approval. Upon approval, the VfW will sign the Certificate of Approval in triplicate, forward the original and one copy to the exporter, and retain one copy together with the copy of the contract for its files. Each Certificate of Approval shall be dated, assigned a serial number starting with VfW/CA/0001, and signed by the responsible VfW official. Where no JEIA approval is required, VfW will note on the Certificate of Approval in the appropriate space "JEIA Approval not required".

ACTION BY AUSSENHANDELSBANK

7. (a) The exporter will file the original Certificate of Approval with his Aussenhandelsbank. Thereafter upon submission of an ECD by the exporter, the Aussenhandelsbank shall (1) screen the ECD against the Certificate of Approval to ascertain that the export has been approved and that the quantity of export is within the limitation stated in the Certificate of Approval, and (2) in proper cases, in the space provided for JEIA or VfW approval, stamp the ECD "Certificate of Approval filed" and indicate on the ECD the date of the Certificate of Approval and its serial number. The Aussenhandelsbank shall also record on the original Certificate of Approval, which is retained in the files of the Aussenhandelsbank, the serial number of all ECDs approved, date of approval and quantity of export under each ECD.

(b) As soon as ECDs have been issued for the total of exports covered by the Certificate of Approval, the Certificate of Approval shall be marked "Fulfilled" by the Aussenhandelsbank. No further ECDs may be approved under authority of such certificate. Filed copies of expired Certificates of Approval shall be stamped "Expired" upon the date of their expiry.

(c) It is the responsibility of the Aussenhandelsbank under paragraph 8 of JEIA Instruction No. 1, First Revision, not to approve any ECD that is not covered by a valid Certificate of Approval as required under this Regulation.

APPLICATION TO EXPORT UNDER CONTRACTS APPROVED PRIOR TO 1 DEC. 1948

8. No Certificate of Approval is needed to complete exports on shipments made under export contracts approved by JEIA prior to 1 Dec. 1948. In such cases, the exporter shall present the approved export contract together with the ECD to the Aussenhandelsbank, and the Aussenhandelsbank shall endorse on the ECD "No Certificate of Approval required—Export contract approved by JEIA" and shall indicate the approving Branch Office serial number of the contract and date of approval. The Aussenhandelsbank shall accept such prior JEIA approval in place of the JEIA or VfW Certificate of Approval as set forth in this regulation and issue the ECD under the terms and conditions set forth in JEIA Instruction No. 1, First Revision. The Aussenhandelsbank shall also make appropriate notation of the ECDs issued on the copy of the contract.

BULK SHIPMENTS

9. When several export shipments are made under a single export contract, each shipment requires a separate ECD for presentation to the Customs. This applies equally whether the contract was approved by JEIA

prior to 1 December 1948, a Certificate of Approval has been issued, or for which no Certificate of Approval is required.

Date of issuance: February 10, 1949.

For the Director General.

CHARLES E. BINGHAM,
Director,
Foreign Trade Division.

[SEAL] EDWARD F. WITSELL,
Major General,
The Adjutant General.

ANNEX "A"

Pursuant to Regulation No. 1 of JEIA Instruction No. 1, First Revision

CERTIFICATE OF APPROVAL

Number JEIA/CA----------
Date ----------
Valid until ----------
(Expiry of contract)

(Name of exporter)

(Address)

---

is authorized to export ----------

(Description, sales price and quantity of commodities)

to be consigned to: ----------
(Name and address of consignee)

sold to: ----------
(Name and address of purchaser)

under contract dated----------

Export of the above commodities may be made in one or several shipments under the aforementioned contract.

VfW approval: JEIA approval:

To be filled out by exporter, either printed or typewritten.

[F. R. Doc. 49-2150; Filed, Mar. 22, 1949; 8:53 a. m.]

DEPARTMENT OF COMMERCE

Civil Aeronautics Administration

[Amdt. 3]

ORGANIZATION

MISCELLANEOUS AMENDMENTS

The Secretary of Commerce is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it (see R. S. 161; 5 U. S. C. 22). The Administrator of Civil Aeronautics is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of the Civil Aeronautics Act of 1938, as amended, as he shall deem necessary to carry out such provisions and to exercise and perform his powers and duties under the act (see sec. 205, 52 Stat. 984; 49 U. S. C. 425; 5 F. R. 2107, 2421).

Acting pursuant to the foregoing authority, the "Organization of the Civil Aeronautics Administration" is amended by eliminating subpart designations, adopting new section numbers, and adding a new section 18, as follows:

GENERAL PROVISIONS

Sec.
1. *General.* * * *

ADMINISTRATIVE OFFICES

11. *Office of the Administrator.* * * *
12. *Staff Officers.* * * *
13. *Office of Airports.* * * *
14. *Office of Aviation Safety.* * * *
15. *Office of Federal Airways.* * * *
16. *Office of Business Management.* * * *
17. *Office of Field Operations.* * * *

18. *Air Navigation Development Board*—(a) *Establishment.* The Air Navigation Development Board (hereafter called the "Board") has been established within the Civil Aeronautics Administration by virtue of a charter of agreement cosigned by the Secretary of Defense on October 29, 1948, and the Secretary of Commerce on November 2, 1948. The action to establish the Board was taken pursuant to authority contained in the Civil Aeronautics Act of 1938 and section 161 of the Revised Statutes of the United States, and in accordance with recommendations of the Research and Development Board of the National Military Establishment for the development of a nation-wide air navigation system to serve the needs of civilian and non-tactical military aviation and capable of useful integration with any air defense system established by the National Military Establishment.

(b) *Powers and duties of the Board.* (1) The Board shall formulate, and from time to time modify as it may deem necessary, a unified program for research on and development of aids for a common national system of air navigation and air traffic control (hereinafter called "the common system") to serve the needs of civilian and non-tactical military aviation but being capable of useful integration with any air defense system established by the National Military Establishment. In so doing, the Board shall be guided by the operational requirements of non-tactical military aviation as well as of air carriers, private pilots and other civil users of the air space, as transmitted by or through the Air Coordinating Committee, and shall evolve a system combining the greatest possible utility to all such users.

(2) The Board shall integrate to the maximum extent possible the national security requirements for the common system as transmitted by or through the Research and Development Board and the non-tactical operational requirements of the users of the system as transmitted by or through the Air Coordinating Committee. Where such classes of requirements are inconsistent, the Board shall determine the relative weight to be accorded to each class and inform the Research and Development Board and the Air Coordinating Committee thereof. No action shall be taken by the Board on the basis of such determinations until a reasonable time has been given to the Research and Development Board and the Air Coordinating Committee for comment.

(3) The Board shall supervise the conduct of all common system research and development projects. Utilizing the contractual and legal facilities of the Administrator of Civil Aeronautics, the Board shall allocate and, with due regard to existing commitments, may reallocate all common system research, development and test projects and funds therefor by contract or other arrangements with government agencies, universities, commercial organizations, or other organizations. The Board shall not itself operate any laboratories or pilot plants.

(4) The Board shall prepare a single comprehensive budget for all research and development on the common system. Funds appropriated for the common system shall be expended only in furtherance of that system pursuant to programs formulated by the Board. No agency or group of the National Military Establishment or the Department of Commerce shall initiate or maintain any research or development projects on the common system or any part thereof without the express authorization of the Board.

(5) The Board shall be guided by the advice of the Research and Development Board with respect to (i) the economic soundness of such budgetary planning for research and development in connection with the common system as may be within the field of interest of the Research and Development Board; (ii) planning policies from the standpoint of national security; (iii) the balance of emphasis to be placed on the various phases of the common system program; (iv) coordination of the common system program with programs of marine, land, and tactical air navigation and air defense; (v) the maximum amount of research and development effort and facilities which may be made available for the common system by the National Military Establishment; and (vi) which projects shall be classed as common system projects as differentiated from tactical projects.

(c) *Organization.* (1) In accordance with the terms of the charter, the Board shall consist of four full-time representatives, one each for the Army, the Navy, the Air Force, and the Civil Aeronautics Administration. Each appointment to the Board shall be subject to the prior concurrence of the heads of the other three agencies concerned. No action may be put into effect on any matter before the Board without the concurrence of all members, exclusive of the Chairman.

(2) The Board shall have a Chairman who shall not otherwise be employed by the Government and who may serve on a part-time basis. The Chairman shall be appointed by the Secretary of Commerce with the concurrence of the Secretary of Defense.

(3) The Board shall have a Director of Development selected by the Secretary of Defense after receiving the recommendation of the Board. The Director of Development shall supervise and direct the common system program in accordance with policies and requirements of the Board.

(4) The Administrator of Civil Aeronautics shall, within the limits of available Board appropriations, provide adequate staff for the effective conduct of the work of the Board. In making staff appointments, the Administrator shall consider the recommendations of the Director of Development made with the approval of the Board.

(d) *Administration.* The Board may establish such rules of administration and procedure as it may need which are not inconsistent with the provisions of its charter; however, except as set forth in (1) through (3) of this section, the Board is responsible to the Administrator of Civil Aeronautics, and it shall be subject to all administrative policies and procedures to the same extent as any other unit of the Administration, except where specifically exempted therefrom in writing by the Administrator. Exceptions shall exist with respect to: (1) The powers and duties of the Board described in subparagraph (5) of paragraph (b); (2) reports to be made by the Chairman to the Secretaries of Commerce and Defense from time to time on the general progress of the Board's work with such recommendations for amendment to the charter as he may deem necessary; and (3) final determinations on substantive matters on which the Board cannot reach agreement, and on which the Administrator's determination is not acceptable to all members of the Board exclusive of the Chairman. Such matters may, at the request of any member of the Board, be referred to the Secretaries of Commerce and Defense jointly for final determination.

(e) *Public relations.* The public may secure information or make submittals or requests by communicating with the Executive Secretary, Air Navigation Development Board, Civil Aeronautics Administration, A–9, Room 5126, Department of Commerce Building, Washington 25, D. C.

WASHINGTON NATIONAL AIRPORT

Sec.
31. *Office of the Airport Administrator.* * * *

AERONAUTICAL CENTER

41. *General.* * * *

REGIONAL OFFICES

51. *General.* * * *
52. *Organization.* * * *
53. *Location.* * * *

FOREIGN OFFICES

61. *General.* * * *
62. *Organization.* * * *
63. *Location.* * * *

(R. S. 161; 52 Stat. 984; 5 U. S. C. 22; 49 U. S. C. 425; 5 F. R. 2107, 2421)

This amendment shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] D. W. RENTZEL,
Administrator of Civil Aeronautics.

Approved:

JOHN R. ALISON,
Acting Secretary of Commerce.

[F. R. Doc. 49–2152; Filed, Mar. 22, 1949; 8:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 7185]

LAKE BROADCASTING CO., INC.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Lake Broadcasting Company, Incorporated, Gary, Indiana, Docket No. 7185, File No. BP–4341; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 11th day of March 1949;

The Commission having under consideration the above-entitled application requesting a permit to construct a new standard broadcast station to operate on the frequency 1270 kilocycles, with 1 kilowatt power, unlimited time in Gary, Indiana;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of the proposed station would involve objectionable interference with stations WHBF, Rock Island, Illinois and WMRO, Aurora, Illinois, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations with particular reference to the areas and populations which may be expected to receive satisfactory service.

It is further ordered, That Rock Island Broadcasting Company, licensee of Station WHBF, Rock Island, Illinois and WMRO, Incorporated, licensee of Station WMRO, Aurora, Illinois are made parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49–2159; Filed, Mar. 22, 1949; 8:55 a. m.]

[Docket Nos. 7942, 9256]

ABE LAPIDES AND BOWLING GREEN STATE UNIVERSITY

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Abe Lapides, Pontiac, Michigan, Docket No. 7942, File No. BP–5331; Bowling Green State University, Bowling Green, Ohio, Docket No. 9256, File No. BP–7061; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 10th day of March 1949;

The Commission having under consideration the above-entitled applications each requesting authority to construct a new standard broadcast station on the frequency of 730 kilocycles; Abe Lapides, Pontiac, Michigan, requesting the power of 1 kilowatt, daytime only using a directional antenna and Bowling Green State University requesting the power of 250 watts, daytime only;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications are designated for hearing in a consolidated proceeding, at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of the individual applicant and of the officers, Board of Trustees and members of Bowling Green State University to construct and operate the proposed stations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations would involve objectionable interference with stations WPIT, Pittsburgh, Pennsylvania, and CBL, Toronto, Canada, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed stations would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations, and with the provisions of NARBA.

7. To determine on a comparative basis which, if either, of the applications in

this consolidated proceeding should be granted.

It is further ordered, That, WPIT Inc., licensee of Station WPIT, Pittsburgh, Pennsylvania, is made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2158; Filed, Mar. 22, 1949; 8:55 a. m.]

[Docket No. 8606]

SUSQUEHANNA BROADCASTING CO. (WSBA)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Susquehanna Broadcasting Company (WSBA), north of York, Pennsylvania, Docket No. 8606, File No. BP-6080; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 11th day of March 1949;

The Commission having under consideration the above-entitled application for a construction permit to change the facilities of Station WSBA, north of York, Pennsylvania, from frequency 900 kilocycles, 1 kilowatt power, daytime only to frequency 910 kilocycles, 1 kilowatt power, unlimited time and to install a new transmitter and a directional antenna;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of Station WSBA as proposed and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of Station WSBA as proposed would involve objectionable interference with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of Station WSBA as proposed would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of Station WSBA as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations, particularly with reference to the areas and populations to receive satisfactory service.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2160; Filed, Mar. 22, 1949; 8:55 a. m.]

[Docket No. 8879]

BLUFF CITY BROADCASTING CO. (WDIA)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of E. R. Ferguson and J. R. Pepper d/b as Bluff City Broadcasting Company (WDIA), Memphis, Tennessee, Docket No. 8879, File No. BP-6617; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 10th day of March 1949;

The Commission having under consideration the above-entitled application of Bluff City Broadcasting Company, licensee of Station WDIA, Memphis, Tennessee, for a construction permit to change frequency from 730 kilocycles to 1240 kilocycles and to increase time of operation from daytime only to unlimited time;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application of Bluff City Broadcasting Company is designated for hearing at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of station WDIA as proposed and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of station WDIA as proposed would involve objectionable interference with stations KWAK, Stuttgart, Arkansas, WENK, Union City, Tennessee, and WGRM, Greenwood, Mississippi, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of station WDIA as proposed would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of station WDIA as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations with particular reference to whether the station would provide satisfactory service to the city of Memphis and its metropolitan district.

5. To determine whether the operation of station WDIA is in violation of the laws of the United States, particularly the provisions of section 1304 of the Criminal Code of the United States (18 U. S. C 1304), prohibiting the broadcasting of information concerning a lottery, gift enterprise, etc. and, if so, to determine the applicant's qualifications to operate station WDIA as proposed.

It is further ordered, That, Stuttgart Broadcasting Co., licensee of station KWAK, Stuttgart, Arkansas, Union City Broadcasting Co., Inc., licensee of station WENK, Union City, Tennessee, and P. K. Ewing, licensee of station WGRM, Greenwood, Mississippi, are made parties to the proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2155; Filed, Mar. 22, 1949; 8:54 a. m.]

[Docket No. 9177]

JAMES L. KILLIAN

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In reapplication of James L. Killian, Fort Payne, Alabama, Docket No. 9177, File No. BP-6748; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 10th day of March 1949;

The Commission having under consideration the above-entitled application requesting a permit to construct a new standard broadcast station in Fort Payne, Alabama, to operate on the frequency 1290 kc, with 250 watts power, daytime only;

It is ordered, That pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of the proposed station would involve objectionable interference with existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of the proposed sta-

tion would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations, particularly with respect to the assignment of a Class IV Station to a regional channel.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2153; Filed, Mar. 22, 1949; 8:54 a. m.]

[Docket No. 9245]

LAKE COUNTY BROADCASTING CORP.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Lake County Broadcasting Corporation, Docket No. 9245, File No. BPH-1488; for construction permit for new Class B FM broadcast station at Chicago, Illinois.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 9th day of March 1949;

The Commission having under consideration the above-entitled application requesting a construction permit for a new Class B FM broadcast station at Chicago, Illinois;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application be designated for hearing to be held at a time and place to be designated by subsequent order of the Commission upon the following issues:

1. To determine the legal, technical, financial and other qualifications of the applicant to construct and operate the proposed stations.

2. To obtain full information as to all transactions, contracts, agreements, or understandings concerning the transfer of goods, chattels, equipment, real property, or other assets and stocks liabilities, and obligations from Calumet Broadcasting Corporation (now dissolved) to the applicant corporation, Lake County Broadcasting Corporation; and as to the manner in which ownership of the stock of applicant corporation was acquired and determined.

3. To determine the areas and populations which may be expected to gain or lose service from the operation of the proposed station and the character of other broadcast services available to those areas and populations.

4. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

5. To determine whether the operation of the proposed station would involve objectionable interference with any existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities, and if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

7. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

8. To determine whether, in view of the facts adduced under the foregoing issues, public interest, convenience, and necessity would be served by granting the above-entitled application.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2163; Filed, Mar. 22, 1949; 8:56 a. m.]

[Docket No. 9246]

FLORIDA BROADCASTING CO. (WMBR-TV)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Florida Broadcasting Company (WMBR-TV), Jacksonville, Florida, Docket No. 9246, File No. BMPCT-410; for additional time in which to complete construction of TV station WMBR, Jacksonville, Florida.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 10th day of March 1949;

The Commission having under consideration the above-entitled application of Florida Broadcasting Company (File No. BMPCT-410) for additional time in which to complete construction of TV broadcast station WMBR-TV, Jacksonville, Florida; and

It appearing, that on May 27, 1948, the Commission granted Florida Broadcasting Company a construction permit for a TV broadcast station at Jacksonville, Florida (BPCT-378); and

It further appearing, that the construction of the TV broadcast station authorized on May 27, 1948, has not been completed, and the Commission being fully advised in the premises;

It is ordered, That, pursuant to sections 309 and 319 of the Communications Act of 1934, as amended, the above-entitled application (File No. BMPCT-410) is designated for hearing at a time and place to be specified in a subsequent order upon the following issues:

1. To determine whether Florida Broadcasting Company has been diligent in proceeding with the construction of the television station at Jacksonville, Florida as authorized by the construction permit granted May 27, 1948 (BPCT-378).

2. To determine whether it would be in the public interest, convenience and necessity to grant the application of Florida Broadcasting Company (File No. BMPCT-410) for additional time in which to construct the TV broadcast station at Jacksonville, Florida, as authorized by the Commission on May 27, 1948 (File No. BPCT-378).

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2162; Filed, Mar. 22, 1949; 8:56 a. m.]

[Docket No. 9252]

CUSTER COUNTY BROADCASTING CO.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Custer County Broadcasting Company, Broken Bow, Nebraska, Docket No. 9252, File No. BP-6914; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 10th day of March 1949;

The Commission having under consideration the above-entitled application which requests a permit to construct a new standard broadcast station to operate on the frequency 1400 kilocycles, with 250 watts power, unlimited time in Broken Bow, Nebraska;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of the proposed station would involve objectionable interference with Stations KCOW, Alliance, Nebraska; KOLN, Lincoln, Nebraska; KAYS, Hays, Kansas or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

It is further ordered, That, Sandhills Broadcasting Corporation, licensee of Station KCOW, Alliance, Nebraska; Inland Broadcasting Company, licensee of Station KOLN, Lincoln, Nebraska; and KAYS, Incorporated, licensee of Station

KAYS, Hays, Kansas are made parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2154; Filed, Mar. 22, 1949; 8:54 a. m.]

[Docket No. 9253]

WOAX, INC. (WTNJ) AND MORRISVILLE BROADCASTING CO. (WBUD)

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of WOAX, Inc. (WTNJ), Trenton, New Jersey, Docket No. 9253, File No. BP-6845; Morrisville Broadcasting Company (WBUD), Morrisville, Pennsylvania, Docket No. 9254, File No. BP-6967; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 10th day of March 1949;

The Commission having under consideration the above-entitled applications each requesting authority to change their present facilities to the frequency of 1260 kilocycles; WOAX, Inc. requesting the power of 500 watts, daytime only and Morrisville Broadcasting Company requesting the power of 5 kilowatts, DA-1, unlimited time and to change transmitter location;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications, are designated for hearing in a consolidated proceeding, at a time and place to be designated by subsequent order of the Commission upon the following issues:

1. To determine the technical, and other qualifications of the applicant corporations, their officers, directors and stockholders to construct and operate stations WTNJ and WBUD as proposed.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of stations WTNJ and WBUD as proposed and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of stations WTNJ and WBUD as proposed would involve objectionable interference with stations WNAC, Boston, Massachusetts and WFBM, Indianapolis, Indiana or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of stations WTNJ and WBUD as proposed would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of stations WTNJ and WBUD as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

It is further ordered, That, the Yankee Network, Inc., licensee of Station WNAC, and WFBM, Inc., licensee of Station WFBM, are made parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2156; Filed, Mar. 22, 1949; 8:54 a. m.]

[Docket No. 9255]

LAMAR COUNTY BROADCASTING CO.

ORDER DESIGNATING APPLICATION HEARING ON STATED ISSUES

In re application of Cecil Hardy, Charles L. Cain, Merl Saxon, O. E. Smith and J. T. Smith, a partnership, d/b as Lamar County Broadcasting Company, Paris, Texas, Docket No. 9255, File No. BP-6596; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 10th day of March 1949;

The Commission having under consideration the above-entitled application for permit to construct a new standard broadcast station to operate on the frequency 1250 kc, with 1 kw power, daytime only, in Paris, Texas;

It is ordered, That pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at a time and place to be specified by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of the proposed station would involve objectionable interference with Station KSST, Sulphur Springs, Texas, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

5. To determine the overlap, if any, that will exist between the service areas of the proposed station and of the station proposed by Charles L. Cain at Grand Prairie, Texas, in his application (File No. BP-6136; Docket No. 8543), the nature and extent thereof, and whether such overlap if any, is in contravention of § 3.35 of the Commission's rules.

It is further ordered, That Hopkins County Broadcasting Company, licensee of Station KSST, Sulphur Springs, Texas, is made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2157; Filed, Mar. 22, 1949; 8:55 a. m.]

[Docket Nos. 9258, 9259]

ALASKA BROADCASTING CO. AND BARANOF ENTERPRISES, INC.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of William J. Wagner tr/as Alaska Broadcasting Company, Sitka, Alaska, Docket No. 9258, File No. BP-6926; Baranof Enterprises, Inc., Sitka, Alaska, Docket No. 9259, File No. BP-7110; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 11th day of March 1949;

The Commission having under consideration the above-entitled applications each requesting authority to construct a new standard broadcast station on the frequency 1400 kilocycles, with 250 watts power, unlimited time, at Sitka, Alaska;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications are designated for hearing in a consolidated proceeding, at a time and place to be designated by subsequent order of the Commission upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of the individual applicant and of the applicant corporation, its officers, directors and stockholders to construct and operate the proposed stations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations would involve

objectionable interference with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the proposed operations would involve interference each with the other or with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2161; Filed, Mar. 22, 1949; 8:56 a. m.]

STATION WKAX

PUBLIC NOTICE CONCERNING PROPOSED ASSIGNMENT OF LICENSE OF STATION WKAX, BIRMINGHAM, ALABAMA [1]

The Commission hereby gives notice that on February 18, 1949, there was filed with it an application (BAL-831) for its consent under section 310 (b) of the Communications Act to the proposed assignment of license of station WKAX, Birmingham, Alabama, from Courier Broadcasting Service, Inc., to Standard Broadcasting Co., Inc. The proposal to assign the license arises out of a contract of February 17, 1949 pursuant to which the assignor will transfer certain properties and other assets used in the operation of station WKAX for a consideration of $80,000 of which $10,000 has already been paid, $40,000 in cash is due at the closing and $30,000 will be represented by a note executed by the assignee and payable to the assignor in payments of $7,280 per year for the first two years and $5,200 per year thereafter until fully paid. This note carries no interest. Further information as to the arrangements may be found with the application and associated papers which are on file at the offices of the Commission in Washington, D. C.

Pursuant to § 1.321 which sets out the procedure to be followed in such cases including the requirement for public notice concerning the filing of the application, the Commission was advised by applicant on March 4, 1949, that starting on February 28, 1949, notice of the filing of the application would be inserted in the Birmingham Post, a newspaper of general circulation at Birmingham, Alabama, in conformity with the above section.

In accordance with the procedure set out in said section, no action will be had upon the application for a period of 60 days from February 28, 1949 within which time other persons desiring to apply for the facilities may do so upon the same terms and conditions as set forth in the above described contract.

(Sec. 310 (b), 48 Stat. 1086; 47 U. S. C. 310 (b)).

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-2164; Filed, Mar. 22, 1949; 8:56 a. m.]

[1] Section 1.321, Part 1, Rules of Practice and Procedure.

FEDERAL POWER COMMISSION

[Docket No. E-6199]

FORT PECK PROJECT, MONTANA

NOTICE OF REQUEST FOR CONFIRMATION AND APPROVAL OF RATES AND CHARGES FOR SALE OF POWER FROM FORT PECK PROJECT

MARCH 16, 1949.

In the matter of Bureau of Reclamation, Department of the Interior, Fort Peck Project, Montana; Docket No. E-6199.

Notice is hereby given that the Commissioner of the Bureau of Reclamation, Department of the Interior, has filed with the Federal Power Commission for confirmation and approval, pursuant to the provisions of the Fort Peck Act (52 Stat. 403), a Schedule of Additive Rate for Wholesale Firm Power Service, reading as follows:

SCHEDULE OF ADDITIVE RATE FOR WHOLESALE FIRM POWER SERVICE

Effective. March 1, 1949.

Available. In the area served by the Fort Peck Project.

Applicable. To wholesale firm power customers who contract subsequent to the effective date hereof to purchase electric power and energy under the provisions of Rate Schedule R6-F2 (FPC No. 5), and who are served with power and energy furnished to the United States by the Montana-Dakota Utilities Company, on an exchange basis, and whose total requirements of power and energy cannot be supplied by the United States by the exercise of its license with the Company for the transmission of energy generated at the Fort Peck Power Plant.

Monthly additive rate. 0.95 mill per kilowatt-hour on the number of kilowatt-hours which result from the following formula:

$$A=\frac{B}{C}\times\tfrac{1}{2}(2C+2D-E)$$

where,

A=Number of kilowatt-hours of customer's total monthly use to which the additive rates will apply. Unless A is a positive number, the monthly additive rate shall not apply.

B=Total number of kilowatt-hours supplied during the billing period for service under Rate Schedule R6-F2 to the customer to whom this additive rate schedule applies.

C=Total number of kilowatt-hours supplied during the billing period for service under Rate Schedule R6-F2 to all customers to whom this additive rate schedule applies.

D=Total number of kilowatt-hours supplied under Rate Schedule R6-F2 during the billing period in fulfilling obligations to customers under contracts entered into prior to the effective date hereof who are served with power and energy furnished to the United States by the Montana-Dakota Utilities Company, on an exchange basis, except that when 2 times this factor D is equal to or greater than factor E, both $2D$ and E shall be omitted from the formula in the determination of A.

E=Total kilowatt-hours delivered by the United States to the Montana-Dakota Utilities Company for its own use which, if no deductions were made for the kilowatt-hours supplied to the Company on an exchange basis, would have been billed to the Company in the last block of the rate under which the Company receives service.

Termination of rate schedule. The applicability of this rate schedule shall terminate at the date when electric power is available for commercial sale from the Garrison Dam Power Plant, now under construction which date is estimated to be December 31, 1954.

Any person desiring to make comments or suggestions for Commission consideration with respect to the foregoing should submit the same on or before April 4, 1949, to the Federal Power Commission, Washington 25, D. C.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-2134; Filed, Mar. 22, 1949; 8:45 a. m.]

[Docket Nos. G-627, G-635]

CITY OF PITTSBURGH ET AL.

NOTICE OF ORDER ACCEPTING FOR FILING RATE SCHEDULES EFFECTING RATE REDUCTION

MARCH 18, 1949.

City of Pittsburgh v. Pittsburgh and West Virgina Gas Company and Kentucky West Virginia Gas Company; Docket No. G-627. In the matter of Pittsburgh and West Virginia Gas Company and Kentucky West Virginia Gas Company; Docket No. G-635.

Notice is hereby given that, on March 16, 1949, the Federal Power Commission issued its order entered March 15, 1949, accepting for filing Kentucky, West Virginia Gas Company's rate schedules effecting rate reduction in the above-designated matters.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 49-2144; Filed, Mar. 22, 1949; 8:49 a. m.]

[Docket No. IT-5762]

EL PASO ELECTRIC CO.

NOTICE OF ORDER APPROVING CHANGE IN FACILITIES AT INTERNATIONAL BOUNDARY

MARCH 18, 1949.

Notice is hereby given that, on March 15, 1949, the Federal Power Commission issued its order entered March 15, 1949, in the above-designated matter, approv-

ing change in facilities maintained and operated by the El Paso Electric Company at the international boundary for the transmission of electric energy to Mexico.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 49-2145; Filed, Mar. 22, 1949; 8:49 a. m.]

[Docket Nos. ID-863, ID-1085, ID-1110]

ROY F. MILLER ET AL.

NOTICE OF AUTHORIZATION

MARCH 18, 1949.

In the matters of Roy F. Miller, Docket No. ID-863; Fred W. Anderson, Docket No. ID-1085; Henry F. Naybert, Docket No. ID-1110.

Notice is hereby given that, on March 17, 1949, the Federal Power Commission issued its orders entered March 15, 1949, in the above-designated matters, authorizing Applicants to hold certain positions in the Northern States Power Company (Wis.), et al., pursuant to section 305 (b) of the Federal Power Act.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 49-2146; Filed, Mar. 22, 1949; 8:50 a. m.]

[Project No. 1869]

MONTANA POWER CO.

NOTICE OF ORDER AUTHORIZING ISSUANCE OF LICENSE (MAJOR)

MARCH 18, 1949.

Notice is hereby given that, on March 16, 1949, the Federal Power Commission issued its order entered March 15, 1949, authorizing issuance of license (major) in the above-designated matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 49-2147; Filed, Mar. 22, 1949; 8:50 a. m.]

WORCESTER SUBURBAN ELECTRIC CO.

NOTICE OF ORDER APPROVING DISPOSITION OF AMOUNTS CLASSIFIED IN ACCOUNT 107, ELECTRIC PLANT ADJUSTMENTS, AND EXTENDING TIME FOR FILING FINAL STATEMENT OF PROPERTY BY DETAIL ACCOUNTS

MARCH 18, 1949.

Notice is hereby given that, on March 17, 1949, the Federal Power Commission issued its order entered March 15, 1949, approving disposition of amounts classified in Account 107, Electric Plant Adjustments, and extending time for filing final statement of property by detail accounts in the above-designated matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 49-2148; Filed, Mar. 22, 1949; 8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-2387]

CITY OF PORTO ALEGRE

NOTICE OF APPLICATION TO STRIKE FROM LISTING AND REGISTRATION, AND OF OPPORTUNITY FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 17th day of March A. D. 1949.

The New York Stock Exchange, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, has made application to strike from registration and listing the Forty-Year 7½% Sinking Fund Gold Bonds External Loan of 1925 due January 1, 1966 "Unstamped", of City of Porto Alegre.

The application alleges that (1) holders of the above security have been offered the option to elect to accept the provisions of either one or the other of two plans, designated as "Plan A" and "Plan B", respectively; (2) Plan A provides for reduction in the interest rate to 2.25% per annum, for a cumulative sinking fund, and for extension of maturity of the original bonds to July 1, 2006; (3) Plan B provides that, in exchange for each $1,000 principal amount of original bonds, the bondholder would receive a cash payment of $130 and new 3¾% External Dollar Bonds of 1944 of the United States of Brazil in the principal amount of $500; (4) the fiscal agent has reported to the applicant exchange that of the $2,641,500 principal amount of this security outstanding at the time of the offer, $522,000 have been stamped in acceptance of Plan A, $1,924,000 have been surrendered for exchange under Plan B, and $5,000 have been retired by operation of the Plan A sinking fund, leaving outstanding $190,500 of original bonds of the above issue remaining unstamped; (5) the reason for the proposed striking of this security from registration and listing on the applicant exchange is that in the opinion of the exchange the outstanding amount thereof has been so reduced as to make further dealings therein on the exchange inadvisable; and (6) the rules of the New York Stock Exchange in respect to striking a security from registration and listing have been complied with.

Upon receipt of a request, prior to May 25, 1949, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms or conditions. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-2138; Filed, Mar. 22, 1949; 8:46 a. m.]

[File No. 30-220]

PUBLIC SERVICE CORP. OF NEW JERSEY

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 16th day of March 1949.

Public Service Corporation of New Jersey ("Public Service"), a registered holding company, having filed an application with this Commission and an amendment thereto, pursuant to section 5 (d) of the Public Utility Holding Company Act of 1935, for an order under said act, declaring that Public Service has ceased to be a holding company; and

Said application, as amended, stating that Public Service has consummated the plan for its dissolution approved by this Commission under its File No. 54-148 and ordered enforced by the District Court of the United States for the District of New Jersey, Civil Action No. 11105, which plan became effective July 1, 1948, and, after making the transfers of assets and distributions of securities contemplated by said plan, was dissolved on July 15, 1948.

Appropriate notice of said filing having been given and the Commission not having received a request for hearing with respect to said application within the period specified in said notice, or otherwise, and not having ordered a hearing thereon; and

The Commission finding that Public Service has ceased to be a holding company and that its registration as a holding company should cease to be in effect and that it is not necessary to impose any terms or conditions for the protection of investors in connection with the termination of such registration:

It is ordered, That Public Service has ceased to be a holding company and that the registration of Public Service as a holding company under the Public Utility Holding Company Act of 1935 shall from the date of the entry of this order cease to be effective.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-2136; Filed, Mar. 22, 1949; 8:45 a. m.]

[File No. 70-1895]

GENERAL PUBLIC UTILITIES CORP. ET AL

ORDER GRANTING APPLICATION AND PERMITTING DECLARATION TO BECOME EFFECTIVE

In the matter of General Public Utilities Corporation, Associated Utilities

Corporation, New York State Electric & Gas Corporation, File No. 70–1895.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C. on the 16th day of March 1949.

General Public Utilities Corporation ("GPU"), a registered holding company, and its subsidiary, Associated Utilities Corporation ("Aucorp"), also a registered holding company, and New York State Electric & Gas Corporation ("New York State"), a public utility company, having filed a joint application-declaration, with amendments thereto, regarding primarily the offer by New York State to purchase all the publicly held securities of Keuka Lake Power Corporation ("Keuka"), a subsidiary of Aucorp, and the donation to New York State by GPU and Aucorp of all of their respective holdings of securities of Keuka; and

New York State having applied pursuant to section 3 (a) of the act, for an order exempting it and Keuka from the provisions of the act as a holding company and subsidiary thereof, respectively, when it shall have acquired 10% or more of the common stock of Keuka; and

Applicants-declarants having requested that the Commission enter an order finding that the proposed transfer of securities between GPU, Aucorp and New York State are necessary and appropriate to effectuate the provisions of section 11 (b) of the act within the meaning of sections 371 to 373, inclusive, and 1808 (f) of the Internal Revenue Code, as amended; and

The proposed acquisition by New York State of the securities of Keuka having been approved by the Public Service Commission of the State of New York, subject to certain conditions; and

Public hearings having been held after appropriate notice and the Commission having considered the record and filed its findings and opinion herein:

It is ordered, That said application-declaration, as amended, be, and the same hereby is, granted and permitted to become effective forthwith subject to the terms and conditions provided in Rule U-24.

It is further ordered, That when New York State shall have acquired 10% or more of the common stock of Keuka, New York State, and Keuka as a subsidiary thereof, shall be exempted from all the provisions of the act except, however, the provisions of section 9 (a) (2) thereof.

It is further ordered, That the following transactions are necessary or appropriate to the simplification of the General Public Utilities Corporation's system, of which General Public Utilities Corporation, Associated Utilities Corporation and New York State Electric & Gas Corporation are a part, and are necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935:

(1) Transfer, assignment and delivery by General Public Utilities Corporation to New York State Electric & Gas Corporation of $245,000 principal amount of 6% Income Debentures due July 1, 1960, of Keuka Lake Power Corporation; and

(2) Transfer, assignment and delivery by Associated Utilities Corporation to New York State Electric & Gas Corporation of 2,450 shares of common capital stock, par value $1 per share, of Keuka Lake Power Corporation (including any transfer, assignment or delivery of such shares by Associated Utilities Corporation to General Public Utilities Corporation and by General Public Utilities Corporation to New York State Electric & Gas Corporation).

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49–2137; Filed, Mar. 22, 1949; 8:46 a. m.]

[File No. 70–2057]

UTAH POWER & LIGHT CO. AND WESTERN COLORADO POWER CO.

ORDER GRANTING APPLICATION AND PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 17th day of March A. D. 1949.

Utah Power & Light Company ("Utah"), a registered holding company, and its wholly owned electric utility subsidiary, the Western Colorado Power Company ("Colorado"), having filed a joint application-declaration and amendment thereto pursuant to the Public Utility Holding Company Act of 1935, particularly sections 6, 7, 9 (a), 10 and 12 (f) thereof, and Rule U-45 of the rules and regulations promulgated thereunder, with respect to the following proposed transactions:

Utah owns all of the outstanding securities of Colorado, consisting of 110,000 shares of $20 par value common stock and a fifteen year 4% note in the principal amount of $2,500,000.

Colorado proposes to borrow from Utah from time to time during the year 1949 up to an aggregate amount of $700,000, such borrowings to be evidenced by Colorado's promissory note or notes, which notes will bear interest at the rate of 3½% per annum and will mature not more than eleven months after the date thereof.

The application-declaration, as amended, states that the proposed borrowings are necessary to finance Colorado's construction program during the year 1949.

The application-declaration having been filed on February 7, 1949 and an amendment thereto having been filed on February 23, 1949, notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commission not having received a request for hearing with respect to the application-declaration, as amended, within the period specified in said notice, or otherwise, and the Commission not having ordered a hearing thereon; and

The Commission finding that the proposed transactions satisfy the applicable standards of the act, and observing no basis for adverse findings, and the Commission deeming it appropriate to grant and permit to become effective said application-declaration, as amended, and also deeming it appropriate to grant applicant-declarant's request that the order herein become effective upon the issuance thereof;

It is ordered, Pursuant to said Rule U-23 and the applicable provisions of said act, and subject to the terms and conditions prescribed in Rule U-24, that the said application-declaration, as amended, be, and the same hereby is, granted and permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49–2139; Filed, Mar. 22, 1949; 8:46 a. m.]

[File No. 70–2065]

OHIO POWER CO. AND WEST PENN POWER CO.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 16th day of March A. D. 1949.

The Ohio Power Company ("Ohio"), an electric utility subsidiary of American Gas and Electric Company, a registered holding company, and West Penn Power Company ("West Penn"), an electric utility subsidiary of West Penn Electric Company, a registered holding company, having filed a joint declaration and amendment thereto pursuant to the Public Utility Holding Company Act of 1935, particularly section 12 (b) thereof and Rule U-45 (a) of the rules and regulations promulgated thereunder with respect to the following transactions:

Ohio and West Penn propose to advance $200,000 each on open account, without interest, to Beech Bottom Power Company, Inc. ("Beech Bottom"), whose outstanding capital stock, consisting of 6,700 shares of Common Stock of a par value of $100 per share, is owned 50% by Ohio and 50% by West Penn.

Beech Bottom operates under lease a steam-electric generating station which is actually a combination of two stations, each of 150,000 kilowatts capacity, individually owned by Ohio and West Penn. The power station is operated by Beech Bottom for the joint benefit of the two owner companies which take the entire output of the station and reimburse Beech Bottom for its actual costs.

The working capital of Beech Bottom, substantially all of which is invested in materials and supplies, including coal in stock, has been supplied by Ohio and West Penn. The declaration states that Beech Bottom now needs additional working capital in the aggregate amount of $400,000, of which $300,000 is to be used for coal purchases to bring storage to an amount equal to 100 days' coal supply, and approximately $100,000 is to be used for purchase of needed spare parts for equipment.

The joint declaration, as amended, having been duly filed, and notice of said filing having been duly given in the form

and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commission not having received a request for hearing with respect to said joint declaration, as amended, within the period specified in said notice, or otherwise, and not having ordered a hearing thereon; and

The Commission finding that the requirements of the applicable provisions of the act and the rules and regulations thereunder are satisfied, and that no adverse findings are necessary thereunder, and the Commission deeming it appropriate that said joint declaration, as amended, be permitted to become effective, and also deeming it appropriate to grant the request of declarants that the order become effective upon its issuance:

It is ordered, Pursuant to said Rule U-23 and the applicable provisions of the act, and subject to the terms and conditions prescribed in Rule U-24, that said joint declaration, as amended, be, and the same hereby is, permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-2135; Filed, Mar. 22, 1949; 8:45 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 12905]

ELEONORE RUGGEBERG

In re: Securities owned by and debt owing to Eleonore Ruggeberg, also known as Eleonore Rueggeberg. F-28-22615-A-1, F-28-23673-D-2.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Eleonore Ruggeberg, also known as Eleonore Rueggeberg, whose last known address is Im Burgfeld 118, Frankfurt am Main, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows:

a. One (1) share of $1.00 par value capital stock of 587 Sixth Avenue Corporation, 20 Exchange Place, New York, New York, a corporation organized under the laws of the State of New York, evidenced by a certificate numbered 24, and presently in the custody of Henry A. Ahrens, 82 Wall Street, New York 5, New York, together with all declared and unpaid dividends thereon,

b. Three (3) shares of $1.00 par value capital stock of 961 Third Avenue Corporation, evidenced by a certificate numbered 34, and presently in the custody of Henry A. Ahrens, 82 Wall Street, New York 5, New York, together with all declared and unpaid dividends thereon,

c. One (1) 587 Sixth Avenue Corporation 20 year 4% debenture bond of $60.00 face value, bearing the number 26, and presently in the custody of Henry A. Ahrens, 82 Wall Street, New York 5, New York, together with any and all rights thereunder and thereto,

d. One (1) 961 Third Avenue Corporation 4% debenture bond of $180.00 face value, bearing the number 52, and presently in the custody of Henry A. Ahrens, 82 Wall Street, New York 5, New York, together with any and all rights thereunder and thereto, and

e. That certain debt or other obligation owing to Eleonore Ruggeberg, also known as Eleonore Rueggeberg, by Henry A. Ahrens, 82 Wall Street, New York 5, New York, in the amount of $10.95, as of December 31, 1945, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany);

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 2, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON, *Assistant Attorney General, Director, Office of Alien Property.*

[F. R. Doc. 49-2123; Filed, Mar. 21, 1949; 8:59 a. m.]

[Vesting Order 12906]

REV. JOGEN SAITO AND MRS. NARUO SAITO

In re: Bank account owned by Rev. Jogen Saito and Mrs. Naruo Saito. D-39-18053-E-2.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Rev. Jogen Saito and Mrs. Naruo Saito, whose last known address is Fukui Prefecture, Japan, are residents of Japan and nationals of a designated enemy country (Japan);

2. That the property described as follows: That certain debt or other obligation of State Savings and Loan Association, 239 Merchant Street, Honolulu, T. H., arising out of a savings account, Account Number 4439, entitled Shiro Kashiwa—Attorney-in-Fact for Saito, Mrs. Naruo & Rev. Jogen Saito, E/S, maintained at the aforesaid association, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Rev. Jorgen Saito and Mrs. Naruo Saito, the aforesaid nationals of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 2, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON, *Assistant Attorney General, Director, Office of Alien Property.*

[F. R. Doc. 49-2124; Filed, Mar. 21, 1949; 8:59 a. m.]

[Return Order 276]

FRIEDRICH OTTENSTEIN

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Friedrich Ottenstein, Stockholm, Sweden; Claim No. 6715; February 8, 1949 (14 F. R. 559); Property described in Vesting Order No.

205 (7 F. R. 8669, October 27, 1942) relating to United States Patent Application Serial No. 436,532 (now United States Letters Patent No. 2,404,741).

This return shall not be deemed to include the rights of any licensees under the above patent.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2165; Filed, Mar. 22, 1949; 8:56 a. m.]

[Return Order 282]

NICOLA DE PIETRO ET AL.

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention to Return Published, and Property

Nicola de Pietro, Florence, Italy, Giuseppe de Pietro, Florence, Italy, Maria Giulia de Pietro, Florence, Italy; Claim No. 6975; February 8, 1949 (14 F. R. 559); $2,741.69 in the Treasury of the United States; $2,889.45 in the Treasury of the United States; $2,889.45 in the Treasury of the United States.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2166; Filed, Mar. 22, 1949; 8:57 a. m.]

GRETE BLASS

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Grete Blass, a/k/a Marguerite Blass, Margaretha Blass & Margarete Blass, Sea Cliff, N. Y.; 6788; $35,169.66 in the Treasury of the United States.

All right, title, interest and claim of the Attorney General in and to that certain obligation originally evidenced by two (2) New York Title and Mortgage Co. Series F-1 First Mortgage Certificates, numbered 9426 and 9486, each of $10,000 face value, said interest having been noted on the records of the Trustees of Series F-1, 39 Broadway, New York 6, New York.

Two (2) State of New York, Loan for Highway Improvement Registered Bonds, Issue of March 1911, Due March 1, 1961, Bearing Number 2843 in the Face Value of $1,000 and Number 1203 in the Face Value of $5,000, Registered in the name of "The Attorney General of the United States, Account No. 28-23224", presently in the custody of the Federal Reserve Bank, New York, New York.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2167; Filed, Mar. 22, 1949; 8:57 a. m.]

PIERRE HENRY DUSSUMIER DE FONBRUNE

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Pierre Henry Dussumier De Fonbrune, Paris, France; 38710; Property described in Vesting Order No. 666, dated January 18, 1943 (8 F. R. 5047, April 17, 1943) relating to United States Letters Patent Nos. 1,987,733 and 1,987,734.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2168; Filed, Mar. 22, 1949; 8:57 a. m.]

MARJORIE LEPKOWSKA

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Marjorie Lepkowska, Monte Carlo, Monaco; 5365; $1,140.70 in the Treasury of the United States.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2169; Filed, Mar. 22, 1949; 8:57 a. m.]

LEO LOWENSTEIN

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Leo Lowenstein, Stockholm, Sweden; 6235; Property described in Vesting Order No. 201 (8 Fed. Reg. 625, January 16, 1943) relating to United States Letters Patent No. 2,223,929. Property described in Vesting Order No. 68 (7 Fed. Reg. 6181, August 11, 1942) relating to United States Patent Applications Serial Nos. 245,310 (now U. S. Letters Patent No. 2,375,933); 254,967; 359,171 (now U. S. Letters Patent No. 2,382,732); and 340,363. Property described in Vesting Order No. 2430 (8 Fed. Reg. 16538, December 8, 1943) relating to United States Letters Patent Nos. 2,020,072 and Re 20,563.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2170; Filed, Mar. 22, 1949; 8:57 a. m.]

BRUNILDE MADDALENI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property and Location

Brunilde Maddaleni, Lucca, Italy; 26009; $137,900.42 in the Treasury of the United States. All right, title, interest and claim of any name or nature whatsoever of Brunilde Maddaleni in and to Pieroni Bros. & Company, a Massachusetts partnership.

The following securities presently in the custody of the Safekeeping Department of the Federal Reserve Bank of New York; 100 shares of Pieroni Building Trust (a Massachusetts Trust), and 50 shares of no par

value capital stock of Pieroni Inc., a Massachusetts corporation.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2171; Filed, Mar. 22, 1949; 8:57 a. m.]

MARTHA MEYER

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Martha Meyer, Chicago 40, Ill.; 6705 $474.91 in the Treasury of the United States. One-half of all right, title, interest and claim of any kind or character whatsoever of Emilia Meyer, deceased, in and to the estate of Regina S. Berla, deceased.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2172; Filed, Mar. 22, 1949; 8:57 a. m.]

ELLEN MILO

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property and Location

Ellen Milo, New York, N. Y.; 35475; All right, title, interest, and claim of any kind or character whatsoever of Miss Berta Tucholsky in and to the Trust Estate created under the Last Will and Testament of Ilse Neumann, deceased. Trustee: Security-First National Bank of Los Angeles, 561 South Spring Street, Los Angeles, Calif.; $3,329.40 in the Treasury of the United States.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2173; Filed, Mar. 22, 1949; 8:57 a. m.]

MADDALENA ROSSI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Maddalena Rossi, Boveglio, Province of Lucca, Italy; 5167; Real Estate, premises 1785 Florida Avenue NW., Washington, D. C.; $2,776.08 in the Treasury of the United States.

Executed at Washington, D. C. on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2175; Filed, Mar. 22, 1949; 8:58 a. m.]

OTTO MONHEIMER

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Otto Monheimer, Yonkers, N. Y.; 33949; $534.71 in the Treasury of the United States. One-third of all right, title and interest in and to a trust created under paragraph "ninth" of the will of Sara M. Frank, deceased, for the benefit of Heinrich Monheimer and his issue.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2174; Filed, Mar. 22, 1949; 8:58 a. m.]

SOCIETA ANONIMA LUCCHESE OLII E VINI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Societa Anonima Lucchese Olii e Vini, Lucca, Italy; 35670; Property described in Vesting Order No. 2629 (8 F. R. 17281, December 23, 1943), relating to trade-marks registered in the United States Patent Office under the following numbers: 29,145; 56,446; 87,063; 176,690; 297,151; 299,718 and 313,385.

Executed at Washington, D. C., on March 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2176; Filed, Mar. 22, 1949; 8:58 a. m.]

SOCIETE ANONYME TUBEST

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Societe Anonyme Tubest, Paris, France; 12343; Property described in Vesting Order No. 1344 (8 F. R. 7123, May 28, 1943), relating to United States Letters Patent No. 2,194,888. All interests and rights created in Societe Anonyme Tubest to the extent owned by claimant immediately prior to the vesting thereof by Vesting Order No. 1344, by virtue of an agreement dated April 22, 1939 (including all modifications thereof and supplements thereto) by and between Societe Anonyme Tubest and Titeflex Metal Hose Company (now Titeflex, Inc.), relating among other things to United States Letters Patent No. 2,194,888, and including royalties in the amount of $6,000.

Executed at Washington, D. C., on March. 16, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-2177; Filed, Mar. 22, 1949; 8:58 a. m.]